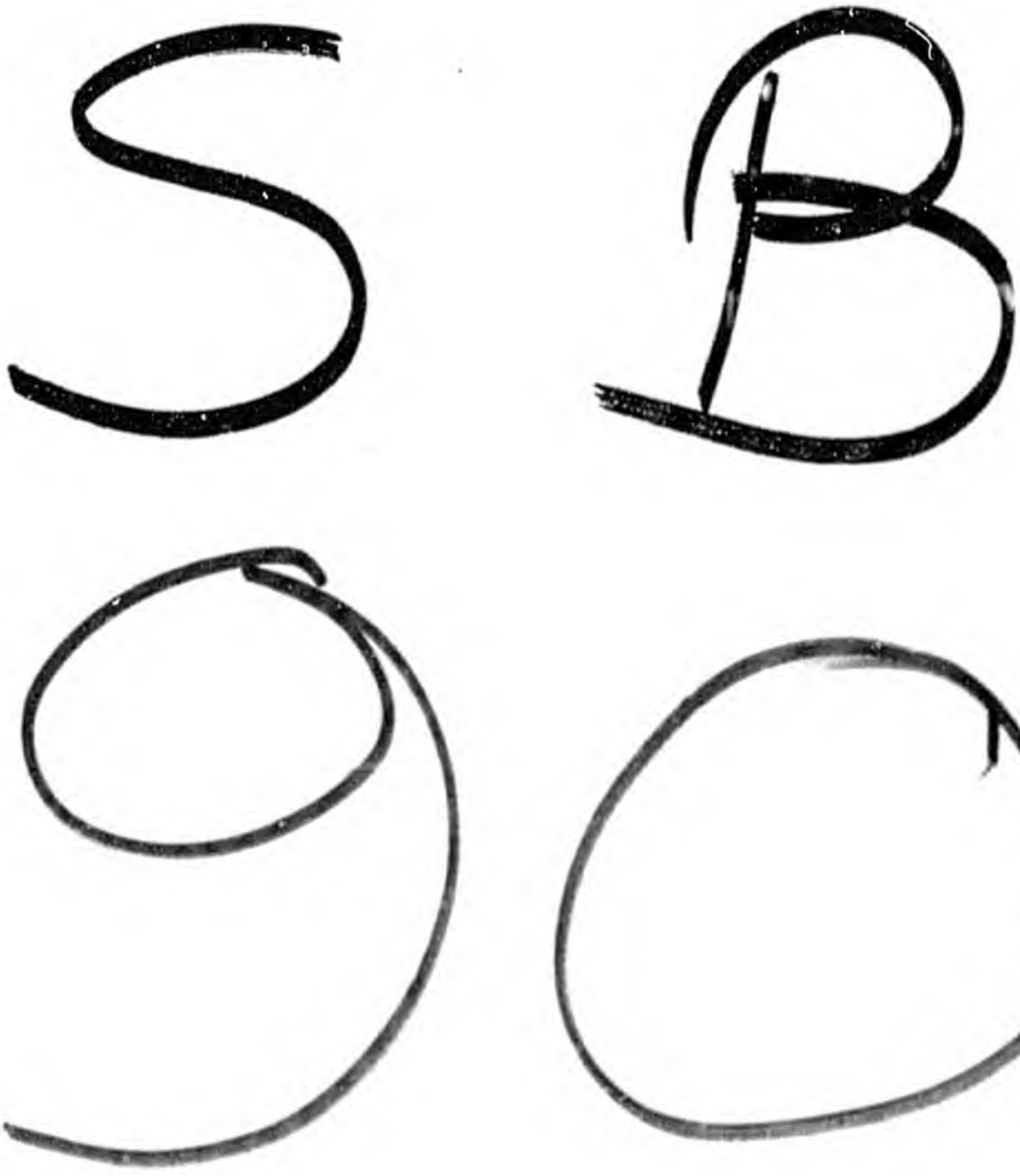

Alaska State Legislature

Senate

Committee on State Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 3, 1981 SENATE STATE AFFAIRS

COMMITTEE REPORT

ON

CSSB 90 ENTITLED "AN ACT RELATING TO PRIVACY AND PUBLIC INFORMATIION; CHANGING RULE 65 OF THE ALASKA SUPREME COURT RULES OF CIVIL PROCEDURE; AND PROVIDING FOR AN EFFECTIVE DATE."

Committee Substitute Bill Summary

The committee substitute makes a number of substantive and technical changes to the original SB 90. The following changes should be noted:

1) The committee substitute permits a reduction or waiver of copying fees in the public interest or if the requester is indigent. Sec. 40.25.015(d).

2) The committee substitute allows a person to obtain 20 pages of a record copied without charge within any 24-hour period. Sec. 40.25.015(d).

3) The committee substitute specifies four "unusual circumstances" which allow the governmental unit additional time to produce the records. Sec. 40.25.020(e).

4) The committee substitute reduces the number of exemptions from the duty to make disclosure from 17 to 12. Sec. 40.25.030(a).

5) The committee substitute states that all records become public after they are 50 years old unless specifically exempted from disclosure by state statute. Sec. 40.25.030(c).

6) The committee substitute provides a mechanism to allow a person whose privacy interests may be invaded unwarrantedly by disclosure of a public record to present arguments against disclosure to the governmental unit. Sec. 40.25.030(b).

7) The committee substitute provides a mechanism whereby individuals can compel government to correct or amend incomplete or inaccurate information in records pertaining to them. Sec. 40.25.060.

Background

The current statutes AS 09.25.110 and AS 09.25.120 addressing access to public records were adopted in 1962. AS 09.25.125 concerning enforcement and injunctive relief was added in 1975.

A bill relating to privacy and public information was first introduced in the 9th Legislature, 1st Session by the then Representative Parr. From first introduction in 1975 and throughout each subsequent legislative session, the proposed legislation received exhaustive study by standing committees of each house and Free-Conference committees.

SB 90 was introduced on January 15, 1981, and referred to the State Affairs and Judiciary Committees. A Senate State Affairs Committee hearing was held on January 29, 1981 (see attached minutes - Exhibit A) and an all-sites teleconference on February 5, 1981 (see attached minutes - Exhibit B). A mark-up session was held on Tuesday evening, February 17, 1981. Consistent with public testimony and the committee input, CSSB 90 was drafted.

It is the Committee's intent that CSSB 90, or a form thereof, be enacted by this legislative session.

Purpose of Committee Substitute SB 90

It is the intention that this legislation be interpreted and implemented in light of the policy that all records of governmental units are open to the public unless specifically exempted by provisions of this bill. The provisions exempting records should be interpreted in the narrowest possible sense, so that in cases of any doubt, the information should be made open to public inspection. The exclusions listed in the bill balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

The committee substitute retains those sections of SB 90 that received virtually unanimous support during public testimony, including: (1) the prohibition against charging the public for

the costs of document searches; (2) the inclusion of municipalities within the coverage of the bill; and (3) the simplified injunctive relief provisions.

Major substantive changes to the original SB 90 include: (1) a reduction or waiver of copying fees in the public interest or if the requester is indigent; (2) allows a person to obtain 20 pages of a record copied without charge within any 24-hour period; (3) specifies four "unusual circumstances" which allow the governmental unit additional time to produce the records; (4) reduces the number of exemptions from the duty to make disclosure from 17 to 12 with the twelfth exemption exempting records from disclosure which would constitute an unjustifiable invasion of privacy; (6) all records become public after they are 50 years sold unless specifically exempted from disclosure by state statute; (7) provides a mechanism to allow a person whose privacy interests may be invaded unwarrantedly by disclosure of a public record to present arguments against disclosure to the governmental unit; and (8) provides a mechanism whereby individuals can compel governmental units to correct or amend incomplete or inaccurate information in records pertaining to them.

It is the committee's desire that the Judiciary Committee consider the following when analyzing CSSB 90: whether medical records should be specifically exempted in light of the provision that all records become public after they are 50 years old and whether independent contractors paid with government funds should be included in the definition of governmental unit. Other concerns were the inclusion of original police entry records in the exemption section and whether there was a need to include a definition of "the right to privacy".

Section Analysis

Sec. 1.

Sec. 40.25.010. Specifies the Findings and Purpose.

Sec. 40.25.015. Provides that all records are open to inspection and copying, and provides for a uniform fee schedule which may be varied in the public interest or if the requester is indigent.

Sec. 40.25.020. Establishes the duties and procedures of a governmental unit to follow when a request for documents is made.

Sec. 40.25.030. Specifies the exemptions.

Sec. 40.25.040. Allows individuals to have access to records that pertain to them.

Sec. 40.25.060. Provides a mechanism whereby individuals can compel governmental units to correct or amend incomplete or inaccurate information in records pertaining to them.

Sec. 40.25.070. Establishes court procedures to require the governmental unit to release the records.

Sec. 40.25.080. Gives a civil cause of action against a person wrongfully withholding records.

Sec. 40.25.090. Definitions section.

Sec. 2 and 3. Amends existing law AS 44.62.310 entitled "Agency meetings public" to remove the authority of a municipality to hold executive sessions other than in accordance with State law and adds a new subsection dealing with the State open-meeting law.

Sec. 4. Changes Rule 65 of the Alaska Supreme Court Rules.

Sec. 5. Repeals the existing "open records" statutes.

Sec. 6. Provides for the effective date of July 1, 1981.

SEN. VIC FISCHER, CHAIR

SEN. BRADLEY

SEN. COLLETTA

SEN. ELIASON

SEN. STIMSON

Alaska State Legislature

Senate

Committee on State Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Jan. 29, 1981 — Behrends Bldg.

1:30 p.m. — First Floor

MEMBERS PRESENT	MEMBERS ABSENT
SENATOR FISCHER, CHAIRMAN	SENATOR ELIASON
SENATOR BRADLEY	SENATOR STIMSON
SENATOR COLLETTA	

AGENDA: Senate Bill 90 "An Act relating to privacy and public information and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Chairman Fischer called the meeting to order and then requested testimony on Senate Bill 90. Eight persons testified on the bill (see attached sign-in sheet).

Senator Parr, prime sponsor of the legislation, outlined the provisions of the bill, from the opening general statement of policy on information to a detailed analysis of the exemptions described. With regard to the exemptions, Senator Parr suggested that there were two ways of grouping them for consideration: 1.) Alaska constitutional right to privacy, and 2.) public policy securing confidentiality for the general public benefit. The exemptions and definitions outlined in SB 90 were carefully covered by Senator Parr prior to more substantive discussion of the legislation. He cited the passage into law of the Federal legislation addressing freedom of information more than thirteen years ago as an example Alaska might follow. Senator Parr also stressed the importance of correctly balancing the people's right to privacy and the people's right to know. Although the legislation has been introduced four times since May of 1975, it has never passed, and the existing statutes remain vague, marked by insufficient definition. Sen. Parr responded to various questions about the language and intent of specific sections.

Bruce Horowitz, supervising attorney of Alaska Legal Services, provided a written proposal for amendment of SB 90. He presented the proposed amendments individually and expressed general support of the legislation.

Exhibit A

Barry Stern, representing the Dept. of Law, emphasized in his testimony that existing statutes addressing freedom of information are inadequate. He further remarked that the constitutional provision for a right to privacy frequently conflicts with the public's right to know. The concept of the right to privacy is left up to the agency to decide. Mr. Stern stressed the need for guidelines in determining the scope of a person's right to privacy. He also maintained that the exemptions section of the legislation is too specific, and agreed to transmit to the committee written suggested language to amend this section.

Elizabeth Cuadra, of the League of Women Voters of Alaska, gave brief testimony expressing support for SB 90 and for accessibility of records.

Patty Moriarty, of the Ombudsman's office, provided testimony from two perspectives: that of the Ombudsman's office, and that of the complainant seeking assistance from the Ombudsman's office. She read from the Ombudsman's report of Hawaii which bore the premise that information should be shared between the people and their elected representatives for decision-making purposes. Ms. Moriarty proposed language changes for specific sections of SB 90.

Earl Deater, of the Operating Engineers Union-302, testified in favor of SB 90, pointing out passage of such a measure would assist people in many professions in obtaining information.

Lee Sharp, attorney for the City and Borough of Juneau, provided testimony on the bill regarding the effect it would have on municipalities. Mr. Sharp maintained that local government should make decisions on how local records should be made available. He pointed out that additional costs would be created by the passage of SB 90 in terms of "search costs" and duplication costs. Mr. Sharp concluded his testimony with the statement that he agreed that public records should be made public, but that some things must rest at the local level.

Roland Shanks, of the Alaska Environmental Lobby, provided brief testimony in support of the bill and the intent behind it, noting that "public corporations" were not included in the list of people and agencies covered by the bill.

Chairman Fischer adjourned the meeting in light of the fact that scheduled time had expired.

WITNESSES FOR
SENATE STATE AFFAIRS COMMITTEE

DATE: 1-29-81 SB 90

Name	Address/Phone	Representing
Sen. Parr		Prime Sponsor
Bruce Horowitz	419 6th St. D322 Juneau 99801 586-6757	Alaska Legal Services Corporation
Barry Stern	Pouch K C	Dept. of Law
Elizabeth Cuadra	9151 Skywood Lane Juneau 99801	League of Women Voters of Alaska
Paddy Moriarty	Pouch JC	Ombudsmen
Earl Dexter	114-3rd	LBAK 302 -
Lee Sharp	586-3300	City & Borough of Juneau
Roland Shawles	419 6th Suite 321 586-2345	Alaska Environmental Lobby

Alaska State Legislature

Senate

Committee on State Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Feb. 5, 1981 — Capitol Building

1:30 p.m. — Room 118

MEMBERS PRESENT	MEMBERS ABSENT
SENATOR FISCHER, CHAIRMAN	SENATOR ELIASON
SENATOR BRADLEY	SENATOR STIMSON
SENATOR COLLETTA	

AGENDA — All-sites teleconference on SB90 "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Chairman Fischer opened the meeting and introduced SB90. He also called for those testifying and any others to send in written comments by the end of next week.

Testimony was received from the following:

From Fairbanks:
Dean Gottcarer, Task Force for
Professional Journalists
Box 74573
Fairbanks 99701

Susan Fischer
Society of Professional Journalists
Box 710
Fairbanks 99701

From Anchorage:
Howard Weaver
Daily News
Pouch 6616
Anchorage 99502

From Ketchikan:
Lew Williams, Editor
Ketchikan Daily News
501 Dock Street
Ketchikan 99901

Exhibit B

From Kodiak:
Jon Newstrom
KMXT Radio
P. O. Box 484
Kodiak 99615

Deborah Nelson
Kodiak Daily Mirror
P. O. Box 1307
Kodiak 99615

From Homer:
Annabel Lund
Managing Editor
Homer News
Box 254
Homer 99603

From Fairbanks:
Scott Sterling
224 Nerland
Fairbanks 99701

Jamie Bryson
860B Yak Estates
Fairbanks 99701

From Sitka:
Ray Medlin
Box 1339
Sitka 99835

From Skagway:
Lucinda Hites
Box Three
Skagway 99840

From Soldotna:
Steve Rinehart
The Peninsula Clarion
Box 1341
Kenai, Alaska 99611

From Anchorage:
Bob Lohr
Rural Cap
327 Eagle St.
Anchorage

From Palmer/Wasilla: Mark Harris

From Haines:
Leo Land
Box 122
Haines 99827

From Nome:
Stanley Summers
KICY AM/FM
Box 820
Nome, Alaska 99762

From Fairbanks: Kent Sturgis
Box 710
Fairbanks 99701

From Anchorage: Kay Fanning
Alaska Newspaper Assoc. & Daily News
Pouch 6616
Anchorage 99502

Ted Berns, Attorney
Mun. of Anchorage
Pouch 6-650
Anchorage 99501

From Fairbanks: Tom Knapp
Box 970
Fairbanks 99701

Bruce Wammack
913 Noble St.
Fairbanks 99701

From Anchorage: Matt Zencey
AKPIRG
Box 1093
Anchorage 99510

Mark Beltz
343 W. 12th Av
Anchorage 9950

From Ketchikan: Christine M
KINB Radio
Ketchikan 99901

Their comments are summarized as follows:

All testimony was in favor of the bill and strongly endorsed its passage. The majority felt that a definition of "right of privacy" needed to be established, that the question of fees for documents be looked at (it should not be a barrier), and that local municipalities and boroughs should not be able to opt out. Other testimony addressed the problem of tampering with public records and the problems that would occur if

if original entry police records were exempt from disclosure. Further testimony touched on difficulties with "sexist pronouns" in the language of the bill and the inclusion of state employees' performance records as public documents.

Chairman Fischer concluded the teleconference thanking participants for their constructive comments and requested written testimony be sent to the Senate State Affairs Committee by the end of next week.

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801
LAW DEPARTMENT (907) 586-3300

February 3, 1981

The Honorable Victor Fischer
Chairman, Senate State Affairs Committee
Alaska State Legislature
Pouch V State Capitol Building
Juneau, Alaska 99811

FILE: Legislature--1981

SUBJECT: Senate Bill 90
(Privacy and Public Information Act)

Dear Senator Fischer:

A bill dealing with privacy and public information has been before the Legislature for several years. Senate Bill 90 is a refinement of those prior unsuccessful attempts. The positions expressed in this letter are those which the Assembly of the City and Borough of Juneau, acting through its Legislative Committee, has adopted in the past and which the committee has not changed this year.

On page 2, beginning at line 19, charges for duplication of public records is limited to recovery of direct cost of duplication. This cost, very often, is the least of the costs involved in providing a copy of a public record. Search cost can be substantial, particularly where the requested record has been moved to an inactive file. It would seem to be questionable public policy to require the tax payers of the state or municipality to assume the burden of searching and reproducing a record when the production will not benefit the general tax paying public, but is for the benefit of the person seeking the record. While the state may have sufficient income to assume this burden, municipalities must still levy taxes to support their operations. For that reason, we request that this section of the bill be amended to permit municipalities to establish a charge for documents which does not exceed the actual cost of producing and duplicating the documents. The federal Freedom of Information Act permits the federal government to recover such costs and this appears to be the more appropriate public policy. The burden of satisfying someone's idle curiosity and of producing records which are solely or primarily for the benefit of the person requesting them should not be borne by the general tax payer but should be borne by the person making the request.

On page 6, lines 13 through 15, the bill provides that upon a request for a public record, the governmental unit must produce the record immediately. This varies considerably from the federal Freedom of Information Act which allows ten days for the agency to determine whether the record is to be produced. Requiring the immediate production of a record places the establishment of the priority of the conduct of the government's business in the hands of the individual requesting a record. If "immediately" is to have any meaning, it must mean "now" and not "as soon as I can get to it." If the custodian of a record is involved in a time-

critical project, the language of the bill would require the custodian to set aside the project in order to search for the record. Not only does record search and production take priority over all other government business, it does not allow a reasonable period of time for the custodian to seek legal advice as to whether a particular record is a public record or falls under one of the exemptions. The ten days allowed in the federal Freedom of Information Act accommodates both of these considerations. We request that the approach taken in the federal Freedom of Information Act be followed in this bill.

Section 3 of the bill (beginning at line 28 on page 9) would repeal the present authority of a state or local government public body to go into executive session to discuss matters which are required or authorized by federal law to be discussed in executive session. More importantly, this section of the bill would repeal the present authority of a municipality to establish by charter or ordinance additional subjects which may be discussed in executive session. If there is no charter provision or ordinance of any municipality in the state which appears to create an abuse of this authority, one can certainly question the need for the removal of this authority. Even if one were able to point to a charter provision which was believed to be an abuse, it should also be remembered that the charter is something which was adopted by the citizens of the municipality. If one is able to point to an ordinance which is believed to be an abuse, it should be remembered that the ordinance can be reached by a referendum. Because we are not aware of any municipality having abused this authority under the present state law and because both mechanisms for the creation of additional subjects for executive session can be reached by the electorate of that municipality, we recommend that Section 3 of the bill be deleted.

Parenthetically, I would point out that in analyzing the deletion of Section 3, one should be careful to distinguish between the authority of a municipality to establish additional subjects for executive session by charter or ordinance on the one hand and the actual use of an executive session for purposes which are not authorized either by law, charter, or ordinance. For example, the fact that a committee of the Legislature has gone into executive session for a purpose not authorized under the Open Meetings Law has no bearing on the fact that the Legislature has authority to amend the statute to provide additional subjects which may be discussed in executive session. Similarly, the fact that the city council may have gone into executive session for some unauthorized purpose, should have no bearing on the council's authority to establish, by ordinance, an additional subject which may be discussed in executive session.

The version of this bill which was adopted by the Senate last year excluded municipalities from the operation of the bill. The Senate State Affairs Committee version of the bill removed municipalities from the bill. It appeared to be the consensus of that committee that local records were a local problem to be dealt with at the local level without state intrusion. The City and Borough of Juneau supports the philosophy that the state should maximize local authority to deal with local problems, particularly for home rule municipalities. For this reason, the City and Borough of Juneau supports the approach taken by the Senate and the Senate State Affairs Committee last session. Just as, I am sure, the Legislature believes that the State of Alaska is in the best position vis-a-vis the federal government to determine which of the State's records should be protected and which should be made public, municipalities

are likewise in the best position to determine which of their records should be protected and which should be made public. It is the municipality, not the State of Alaska, which knows what types of records it generates or comes into possession of. The Legislature has, in the past, demonstrated a total indifference to the need for municipalities to protect certain of their records. One will search the Alaska statutes in vain in an attempt to find a statute dealing specifically with protected municipal records. In that search, however, one will find numerous exceptions for records kept by specific state agencies. Even though municipalities may keep identical records, the Legislature has never seen fit to provide protection for such records in the hands of a municipality. When the the Legislature establishes a program which will involve records which should be protected, it is in a position to address the public records problems at the time it creates the program. Under Senate Bill 90, a municipality would not have that option. It would have to wait to create its program until it had authority from the Legislature to protect the records the program would generate. For the foregoing reasons, we request that Senate Bill 90 be amended to eliminate its coverage of municipalities in the same manner as was done in the bill which was adopted by the Senate last year.

While we believe that the approach requested in the preceding paragraph is the better approach, we also recognize that many of the concerns expressed in that paragraph could also be met by an amendment which would provide for an additional exception at the end of the present 17 exceptions in the bill. The 18th exception would be added after line 18 on page 5 and would read substantially as follows:

> (18) Records of a political subdivision which have been specifically declared by ordinance or charter to be protected records.

If this approach is taken, the provisions of the bill would be applicable to municipalities but the municipality would, nevertheless, retain authority to deal with those records of the municipality which the assembly or council determines should be protected. The creation of a protected class of records by the municipality would have to be accomplished through the ordinance process which involves notice, public hearings, and public input. As a minimum, municipalities should be given the opportunity to deal with their own records in this fashion. If at some time in the future the Legislature determines that municipalities in general have gone "too far" in protecting their records, it can deal with that problem at that time. In the meantime, the Legislature should refrain from encroaching on local autonomy any more than is absolutely necessary.

There are a number of problems which will exist for public servants who are charged with administering public records under this bill. The most severe is the lack of any definition or standards by which one can guage whether or not the release of a record would constitute either an infringement upon a person's right to privacy or an unjustifiable intrusion into a person's right of privacy. The bill uses both terms but defines neither. Also, we find no clue as to why these different terms are used. Further, the use of the word "unjustifiable" to modify the phrase implies that the public official is to balance the individual's right of privacy against some other unstated consideration. Too much is at stake to place this burden upon a public employee without additional definitions, standards, or guidance. If the Legislature prescribes a balancing test to determine whether records should be disclosed or not, it, rather than the courts, should provide the standards under which the balancing will take place.

I hope you will give serious consideration to the foregoing comments. If you have any questions, please do not hesitate to call me.

Very truly yours,

Gerald L. Sharp
City-Borough Attorney

GLS:phl

cc: Mike J. Colletta
Brad Bradley
Richard I. Eliason
Terry Stimson
Assembly
Ginny Chitwood, Alaska
Municipal League

THE JUDITH GROUP INC.

P. O. Box 2334 Soldotna, AK 99669

PHONE: 283-4359

February 8, 1981

Senator V. Fischer
Chairman
Senate State Affairs Committee
Pouch V
Juneau, Ak. 99811

Dear Mr. Chairman,

In listening to the testimony on SB 90, February 5, 1981 via Teleconference, we were struck by the similarity of frustration levels to our own experience. Enclosed are copies of correspondence with:

Department of Health & Social Services.....A. Holmburg, Director March 12/79

At the time of the letter to Mr. Holmburg the Judith Group was involved with the Alaskan Family Violence Project, Grant #78-DF-AX-0107 from Law Enforcement Assistance Association awarded to the Alaska Department of Health & Social Services/Ak. Family Violence Program/Judith Group. Portion of the Grant Objectives as they involved the Judith Group included.

Mr. Holmburgs reply.....April 3/79

Response to Mr. Tom Jamadlo telephone request (this request stressed need for immediate response on agency knowledge of incest. Not to include Judith Groups stats) We as yet have to have a response from anyone at Division of Social Services on our letter.....April 4/79

Individual testomy of my own to the White House Conference on Families, Ak. From it is apparent that until the Legislative Auditor, Mr. Wilkinson published there was no way the Judith Group was able to secure any information, stats, whatever. The HSS Statistical report is not comprehensive enough.

All of the questions addressed to Mr. Holmburg should have been answered. According to our understanding the answers were mandated by law; Federal or State. This information should have been available. Unfortunately, Mr. Wilkersons report are mandated only every 3rd. year. The question of due process are very interesting.

Thank you,

Joan Bennett Schrader

Joan Bennett Schrader, Secretary
The Judith Group, Inc.

cc: Sen. C. Parr Sponsor
B. Bradley
R. Elinson
T. Stimson
M. Colletta

LOCALE	OBJECTIVES	DATA COLLECTED	MEASURES OF SUCCESS
Kenai/ Women's Resource Center		-number and case histories of post-crisis assistance -number of victims transported to Anchorage AWAIC -follow up evaluation of victims who remain in Kenai	
Kenai/ Judith Group	To provide intra-family violence victim assistance, public information, and education To research, analyze and document the incidence of incest in one Alaskan community and to collect, develop, and distribute information and materials on incest throughout the state.	-number of volunteer hours -report on incidence of incest in Kenai Peninsula including: -number reported to police -number reported to hospitals -number reported to social service agencies -number which come to attention of Women's Resource Center -comparison to availabe national statistics -actions taken in response to reports -profiles of victims and offenders -random surveys of public opinion to measure awareness, concerns, and attitudes regarding incest - process for collecting and analyzing data concerning repeat rates of known offenders, relation to other crimes, and relation to alcohol will be developed	-documentation that incest is a problem which may be used in program planning -an increase in public awareness of incest, consequences, and services available for victims and offender

March 12, 1979
Box 2334
Soldotna, Alaska 99669

Mr. Arthur C. Holmburg, Director
Department of Health and Social Services
Pouch H O 5
Juneau, Alaska 99811

Dear Mr. Holmburg,

On the 7th of March The Judith Group spoke with Ms. Faye Guthrie, Regional Office Manager, Department of Health and Social Services, in her Anchorage Office. As a result of that meeting we realize that there are many needs we, as a group have.

The most crucial need is to know what is the disposition of those children who are the victims of incest. When we report a case to your office (thru our local workers) it is as if these children no longer exist for us. Now, we understand the need for confidential records, but, there must be some method of finding out what care is taken of these children.

Are there case plans for these children, whether they remain in their homes or are placed out of their homes?

Is there regular follow-up?

Are there preventative services available to the family on a monitored basis?

What reviews are mandated; how regular?

Can the Judith Group expect to gain the following information from your data system?

Date of birth, sex, age, race and religion.
Family structure, including nuclear and extended family.....and here we view it as critical to know the length of time a step-parent or guardian relationship has existed.
Any handicapped condition, physical, emotional, educational, has the child been evaluated and what free, special services have been provided.

Has the child entered care (court order or voluntary placement) and the nature of the custody agreement. Was the victim of incest or sexual abuse provided with a attorney to ensure compliance with their right to the same interest the child in a divorce case would have. The nature of the custody agreement. Is there monitoring, on a continual basis, of the offender, if the offender remains in the home with the child.

Geographic locations upon entry into care.

How placement is funded. Where placement (in the child's home area)

Reason for placement (here we would need to know—if incest or sexual abuse has occurred, what "acting out" the child has done.

Date and type of initial placement

Services provided to child and family prior to placement.

Services provided to child and family (whether foster family, guardian, etc) during ~~prior to~~ placement. Here we want to be able to pick up on the incidence of incest as it is defined in the Alaska Revised Criminal Code Commentarty, Section 11.41.450 INCEST and also Section 11.41.430, subsection (a) (1). Section 11.41.410 Subsection (a) (4).

Placement status of sibling.

Dispositional goal for the child and time by which the goal should be attained.

Other agencies providing to or having responsibility for the child and the family....what monitoring is done on these agencies; ex: if the therapy of the child and the offender is carried on by a Freudian analysist.

Do the records of case transactions include:

dates and changes in legal status.
date, type and location of subsequent placements. Reason for change.
dates of case reviews.
dates and description of outcomes of dispositional reviews.
dates and description of services provided to the child and family by the responsible agency and other agencies with which the child and family has contact. In this area include foster or guardian.
dates of visits between agency and child, agency and natural parents, (and here it would be helpful to know if the natural parents are seperated (living apart) is the other parent informed of the issue and the childs placement) agency and foster parents, and child and natural parents, extendod family in the case of no natural parents available.
date and termination of parental rights.
barriers to adoption when parental rights are terminated (here again did the child have a attorney to protect his/her rights.....property-wise as well as otherwise).
date of discharge, and discharge status (e.g. with natural parents or relatives, adoptive placement, transferred to another agency; has reached majority, death, marriage, other (here: what is other)
whether child was adopted with the assistance of a subsidy and by whom (foster parents, relatives, others, were relatives informed of the adoption prior if foster parents are the party who does adopt).
dates child enters placement thru any agency.
when the offender is involved with the court system as a offendor.
What avenues of complaints does the child have? The family have?

We are attempting to work up a reporting sheet for police, physician, crisis workers, etc. and we must have some idea of what your data will reveal to mesh these reporting sheets with your records.

Was the offender thru the court system of involved only in therapy, what monitoring? and What monitoring is done on out-of-state placement or adoption.

Thank you very much for your time and effort on this matter. It is important to The Judith Group that we have this information. There was a meeting of the various law enforcement agencies in Juneau in February and we have requested copies of that meeting. They have not arrived as yet but we will wait patiently, I guess. What else is new.

Anyway, thank you in advance. Hopefully everything we have asked you about is already either in your data system or is being programmed in.

Next, how do we go about receiving this data?

Sincerely,

Joan Bennett Schrader

Joan Bennett Schrader, Sec.
The Judith Group

cc; Faye Gutherie
Dr. McGinnis
Kenai-Soldotna JRC
Kenai Social Service Office
Alaska Family Violence Program; S. Lederman
URSA
All Advocates
Richard C. Hacker
Commissionor H. Beirne

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Pouch H-05
Juneau, Alaska 99811

April 3, 1979

Ms. Joan Bennett Schrader
Secretary
The Judith Group
Box 2334
Soldotna, Alaska 99669

Dear Ms. Schrader:

We appreciate your concern for victims of incest who are referred to the Division of Social Services. The primary concern of all social service workers within the Division is to protect any child who is in danger of harm in his living situation. Therefore, when referral is received the social service worker investigates as is needed to assess the immediate danger to the child. If a child is found to be in need of removal from his home, he will be placed in a foster family. The worker develops a specific case plan, given the facts of the situation, which is based at efforts to rehabilitate and reunite the family. Workers provide services to children in foster care as well as to the families of the children.

In cases where removal of a child from his home is not required but there is need for protective intervention, the worker's efforts will be focused at working with the family to improve the situation which brought them to the agency's attention. Case reviews occur every three months to insure that all needed services are being brought to bear to remediate the situation.

For reasons of confidentiality, we cannot provide specific details on cases handled by our workers. Information can only be shared on an aggregate basis, as through the Monthly Statistical Report produced by the Division of Social Services. As requested, we are enclosing a copy of the latest Monthly Statistical Report and will be happy to add you to the mailing list for future copies.

Sincerely,

Art Holmberg

Art Holmberg
Director

Enclosure

AH:NK:kk

March 18, 1980 Soldotna Hearing on the

White House Conference on Famlies.

I am Joan Bennett Schrader and I am testifying on my on behalf.

As a member of this community I have grave concern over the follow-thru on the care our youngsters in the Corrections Institutions and Foster Homes receive.

To secure any information on what happens to them is extremely difficult. The reports made available by the DOC are not as comprehensive as I should like to see.

My first reccommendation is to have

Easily accessable information on the placement of these young people. I am not advocating identifiable information but, rather the knowledge communities should have on the placement be in foster-care, that a worker has formated a caseplan; that the worker is in contact on a monthly basis with the young person. Further-more, that monthly personal reports, where possible, be made to the family of the young person by the same worker or in the case where one worker cannot handle this that the DOC workers are able to assure the family of some worker in the DOC has seen and spoken with the young person. That the worker be identified b name and a phone number or address be made available to the famil

In the Preformance Review of the Department of Health & Social Services, Juvenile Confinement Programs, dated September 28, 19 and signed by Gerald Wilkerson, CPA. on behalf of the Legislative Auditor, Division of Legislative Audit, page 10, listed under

D. Juvenile Treatment Plan

"60% of the Department and child care facilitie juvenile files tested did not contain a detailed treatment plan for the juvenile.

In order to assure that juvenile needs are met while in institutional care, a through evaluation of needs and a method of meeting these needs should be prepared by either the Departments caseworker or the institutions staff. If the plan is developed by the institution, it should be subject to review by the Departments caseworker."

Page 11

"Although DOC has a formal decision process for placing juvenile in child care facilities, 57% of the DOC files tested did not indicate how the placement decision was reached. AT DSS 54% of the tested files did not indicate the basis for the placement decision.

Although consideration of all alternative placements is necessar to assure the best possible care by the juveniles. The alternat considered and the reasons for the final selection should be documented to ensure juveniles receive due process."

F. Caseworker cor act with the juvenile

"67% of the Department and child care facility files tested indicated the Department's caseworker had very limited, if any, contact with juveniles after placement. Also, DOC practice precludes probation officer involvement with juveniles placed at McLaughlin Youth Center."

G. Evaluation of the juveniles' progress

"Half of the DOC and 30% of the DSS files tested did not contain any institutional evaluation of the juvenile. Additionaly 75% and 37% of the DOC and DSS files, respectively, did not contain an evaluation of the juvenile by the Departments caseworker. Testing of the institutions files indicated 18% of the juveniles had not been evaluated. Another 44% of the files contained evaluations which did not address the progress of the juvenile. Most of those only addressed the juvenile's status without relating the status to any identifiable problems."

Page 12

"Our testing found that 76% of the cases reviewed did not indicat regular progress reports were sent to parents. The Department should forward copies of all evaluations to the juveniles' parent including any necessary explanations or comments."

The above are only some of the problems with DSS and DOC. I believe that communities should be informed on what the DOC and DSS are doing with children and young people.

end of quotes from evaluation

We dox have a right to information from them and it should not take a copy of the auditors report to finally enable us to put our finger on what is happening to these children.

Last year a request was placed before the DSS, Juneau, for infor: on what happens tochildren who are within the child care syster.

They werex asked.....

Are there case plans for these children, whether they remain in their homes or are placed out of their nomes?

Is there regular follow-up?

Are there preventative services available to the family on a monitored basis? (This is the case of child abuse/neglect)

What reveiws are mandated? How regular?

Can the following information beg gained from yourx data system.....

Date of birth, sex, age, race religion.

Family structure, including nucular and extended family; lengt of time a step-parent or guardianship relation has existed?

Any handicapped condition, physical, emotional, educational.

Has the child been evaluated and what free, special services have been provided?

Has the child enter Care (court order or voluntary placement) and the nature of the custody agreement. Was the victim of incest or sexual abuse provided with a attorney to insure compliance with their right to the same interest the child in a divorce case would have? The nature of the custody agreement. Is there monitoring? On a continual basis? Of the offender if the offender remains within the home with the child?

How placement is funded. Where placement (foster care) in the childs home area.

Reason for placement of child. If incest or sexual abuse has occ what acting out the child has done.

Date and type of initial placement.

Services provided to the child and family prior to the placement

Services provided to the child and family (whether foster family, guardian, etc.) during placement. Placement status of siblings.

Dispositional goal of child and date by which the goal should be attained.

Other agencies provided to or having responsibility for the chil and family, what monitoring is done on these agencies?

Do the records of case transactions include:

dates and changes in legal status
date, type and location of subsequent placements. Reason for the change.
Dates of case reviews.

Dates and description of outcomes of dispositio reviews.

Dates of visits between child and agency, natural parents and agency. Here it would be helpful to know if the natural parent are seperated, (living apart) is the other parent informed of the issue and the childs placement? Visits between foster pare and agency. Between child and natural parents, child and exten family in the case no natural parents are available.

Date of termination of parental rights.

Barriers to adoption when parental rights are terminated, did an attorney protect the childs rights, property-wise as well a other-wise?

Date of discharge and discharge status. With whom? Natural parents, foster parents, relatives, adoption placement, transferred to another agency, reached majority, death, marriage, other what is other?

Whether child was adopted with assistance of subsidy? By whom? (foster, relatives, others?) Were relatives infprmed of the adopt prior if foster parents ar others are the party who dom adopt.

Dates child enters placement thru any agency.

Is the offender in cases of child abuse, sexual abuse, involved with the court? As an offender? How?

What avenues of complaint does the child [illegible] The family have?

If the offender is involved in the cour[illegible]em is it xx by therapy, monitoring done....what and by whom?

What monitoring is done in out of state placement?

These were questions placed before the DSS a year ago and for reasons of confidentiality they were not answered. I believe we have a right to this information. On a ~~Agency~~ basis only, not on individual cases. Everything asked should have been available to any person. It was not then, and after reading the Auditors report, I can understand why.

In order for community members to support a reasonable and usefull program for aid to children and families, records must be kept.

My reccommendation would be for the DSS and DOJ to be directed to keep them and to make their data system have spaces for the questions they were asked.

Thank you for listening.

Respectfully submitted,

Jaon Bennett Schrader

Jaon Bennett Schrader
P.O. Box 1264
Kenai, Alaska 99611

The Judith Group, Inc.
Box 2334
Soldotna, Alaska 99669
April 4, 1979

Division of Social Service
400 Gambell
Anchorage, Alaska 99501

Attention: Tom Janidlo:

Dear Mr. Janidlo,

The following are the population resolutions from the Kenai Peninsula Borough for this area of the Borough.

The City of Kenai	4374
The City of Soldotna	2368
Sterling	1374
Ninilchik	470

Because of the scarcity of time statistics for the Homer and Seward areas, with one exception, are not included. The term Minor used here includes all up to 18 y

From the Soldotna Police	(1977-78)	No involvement of Minors in any crime of a sexual nature. (as victim)
Alaska State Police (Kenai-Soldotna area)	(1978)	No involvement of a Minor in any crime of a sexual nature. (as victim)
Kenai City Police	(1977-78)	Four (4) to six (6) seperate incidents during 1977 - 78. There are no figures for how many children were involved in each incident. To secure more stats on this would necessitate a "hand search" of over eight (8) thousand cases. The Kenai Police do not have the staff needed for such a process. The 4-6 cases were Child Molestation.
Seward City Police	(1978)	One (1) case of incest (Female) that resulted in Court Action, not on the incest related area, but on a "Contributing To The Delinquency of a Minor" by others. This matter was reported as required by Law, to the Social Service.

District Attorney Office (Kenai)	1977-78 to end of March	Cases reaching formal stage Lewd & Lascivious Three (3) Statutory Rape Two (2) Rape (possible Minor Invol no way to tell from Four (4) Contrib. Del. of a Minor Three (3) Felony (Defin Ten (10) Misdemeanor (no way to know if th were sex involvement Office Contacts Two (2) sexual involv (alleged	
Social Service	Kenai Office	1977-78	Seventeen (17) alleged inces cases, Female One (1) sent Prosecutors Office.

Tom, you will appreciate the hurry that this involved and that had we more time we (The Judith Group) would have had all of these reports much more comprehensive.

Hope this will assist you and let us know what happens.

Sincerely,

Joan Bennett Schrader, Sec.
The Judith Group

cc; Juv. Intake Officer (Kenai)
Social Service (Kenai)
Seward Police
Kenai Police
Kenai Care Center
District Attorneys (Kenai)
Alaska State Police (Soldotna)
Soldotna Police
Division of Corrections (Kenai)
Central Peninsula Mental Health
Kenai Peninsula School District (B. Thoschner)
Alaska Court System (Kenai)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

February 6, 1981

The Honorable Vic Fischer
Chairman, Senate State Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 90

Dear Senator Fischer:

At the January 29, 1981 meeting of the Senate State Affairs Committee you requested that I provide the Committee with proposed amendments to SB 90, An Act relating to privacy and public information. Additionally, you requested that I incorporate as many suggestions for amendments that were raised during public testimony that would be consistent with the administration's proposed procedural regulations on public records and the general approach to the subject adopted by the Department of Law after consulting with other state agencies.

To this end, I have drafted and enclosed for your Committee's consideration a proposed committee substitute for SB 90. Additionally, I have prepared a draft of commentary to accompany the legislation. The commentary should naturally be expanded and revised to provide evidence of legislative intent as the bill itself is revised. The draft commentary highlights the differences between the proposed committee substitute and SB 90.

While the proposed committee substitute makes a number of substantive and technical changes to SB 90, the following changes should be noted:

1. The proposed committee substitute permits a reduction or waiver of copying fees in the public interest, consistent with public testimony and the administration's proposed regulations on the subject. Sec. 40.25.015(d).

2. The proposed committee substitute allows a person to obtain 20 pages of a record copied without charge within any 24-hour period, consistent with public testimony and the administration's proposed regulations on the subject. Sec. 40.25.015(d).

03-C7LH

3. The proposed committee substitute specifies a reasonable time frame to permit a governmental unit to search for and locate a requested record and to determine whether an exemption to disclosure applies. This approach is consistent with the administration's proposed regulations on the subject, prior versions of the bill, and the federal act. Sec. 40.25.020.

4. The proposed committee substitute reduces the number of exemptions from the duty to make disclosure from 17 to 12. This approach is consistent with general public testimony on the bill. Sec. 40.25.030(a).

5. The proposed committee substitute specifies guidelines that are to be used by government in determining whether disclosure of a particular record would constitute an unwarranted invasion of privacy. Though not specifically defining the "right to privacy", the guidelines are consistent with public testimony that has requested clarification on this issue. Sec. 40.25.030(b).

6. The proposed committee substitute provides a mechanism to allow a person whose privacy interests may be invaded unwarrantly by disclosure of a public record to present arguments against disclosure to the governmental unit. Sec. 40.25.030(c).

7. The proposed committee substitute provides a mechanism whereby individuals can compel government to correct or amend incomplete or innaccurate information in records pertaining to them. Sec. 40.25.060.

It also should be noted that the proposed committee substitute retains those sections of SB 90 that received virtually unanimous support during public testimony, including: (1) the prohibition against charging the public for the costs of document searches; (2) the inclusion of municipalities within the coverage of the bill; and (3) the simplified injunctive relief provisions.

There is likely to be some disagreement as to several of the changes made by the proposed committee substitute. Most notably, employee personnel evaluations and the names of crime victims are exempt from public disclosure under the proposed committee substitute. However, these relatively minor areas of disagreement should not detract from the general consensus that has developed on the need for legislation on the subject and the significant areas of agreement among all proposals.

I will, of course, be available to discuss this matter further with you at your convenience and to answer any questions that the proposed committee substitute may raise. In the meantime, I look forward to working with the committee during mark-up of SB 90. I have taken the liberty of copying Senator Parr with this letter, the proposed committee substitute and the draft commentary, as I know that as the bill's primary sponsor he will take particular interest in reviewing the changes made to SB 90 by the proposed committee substitute.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: _____
Barry Jeffrey Stern
Assistant Attorney General

BJS:dm

cc: The Honorable Charles H. Parr
Alaska State Senate

Wilson L. Condon
Attorney General

Jerry Reinwand
Executive Assistant to Governor

Keith Specking
Legislative Assistant

Art Peterson
Assistant Attorney General

CITY OF NOME

P.O. BOX 281 · NOME, ALASKA 99762
TELEPHONE (907) 443-5242

February 11, 1981

Senator Vic Fischer, Chairman
Senate State Affairs Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Senator Fischer:

I am writing you about 2 bills you are currently considering. These are SB90 and SB153.

SB90 might open up government, but would be harmful in the process. Executive sessions are a must to insure that the legal & personnel aspects of governments are not endangered. This is especially true in smaller communities where it is difficult to keep anything "private".

The City's personnel records must also be closed. If they become open records, then very little will be put in them for reference purposes and the general administration of the personnel function.

While it might seem simple or easy for larger communities to produce records on request, smaller ones with only one or two employees in the clerk's office can't comply in that fashion. Many records are stored away in boxes and old files and are not easily accessible.

Regarding SB153, the City of Nome is presently in court with the Methodist, Lutheran and Catholic churches over similar issues. We have 14 churches in Nome, almost all of them in "missionary status". They have had a great deal of their land and property exempt until recently when the City said that we couldn't afford it any longer. In 1978, this exempt property was valued at $2,300,000. That was when our total real property was $29,000,000. If anything should be done to the statutes regarding non-profit religious property, it should be to clarify and strengthen them.

Thank you for the opportunity to comment.

Sincerely,

Ivan L. Widom
City Manager

cc: Mayor & City Council
Bob Hicks

CITY OF SEWARD

P. O. BOX 337
SEWARD, ALASKA 99664

2/11/81

CITY MANAGER 224-5214
COMPTROLLER 224-5216
INFORMATION 224-5215
CITY POLICE 224-5201

State Affairs Committee
Pouch V
Juneau, Ak 99811

Dear Mr. Chairman:

I am presenting written testimony concerning the Privacy and Public Information Act. If this bill passes, next year you will be taking more testimony on what to do about the great apathy of witnesses to crimes. Most people will ot be cooperating with police if they are aware that their names, address and other personal information can be given to the public. We will be unab to protect any witness that does not come under the heading of "confidential informant."

My second concern is this: Will the public be made aware that they will be paying additional thousands of dollars a year to staff a governmental unit to produce these records in each community, since they will be charged only "direct" costs such as copy fees, etc.

Who will be making the public aware of what this bill provides? Any informant of any crime will no longer have any right to privacy, except during investigations. Unlike the news media, we do not have a conflict of interest issue here, except that we would like to protect the people from testifying to police under any air of vendetta that this bill will harbor.

Sincerely,

Louis A. Bencardino, Chief
Seward Police Department

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

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Sister Barbara Haake
Ketchikan General Hospital
Ketchikan

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Tom Mingon
Fairbanks Memorial Hospital
Fairbanks

Secretary/Treasurer
Ron Paveras
Alaska Hospital & Medical
Center
Anchorage

Immediate Past President
[illegible]
Providence Hospital
Anchorage

Executive Director
Dennis L. Devitt
Juneau

February 17, 1981

The Honorable Charlie Parr
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Parr:

The Alaska State Hospital Association has reviewed Senate Bill 90 and recommends that the following amendments be adopted.

1. Page 3 Lines 13-18
The exemption found in Subsection (6) should include patient financial information and the reference to autopsy reports ought to be moved from this section to a separate section.

Rational: a) Patient financial data while not part of a medical record, remains personal data about a patient, not the facility and as such should be protected.

b) Autopsy reports should be accessible when a court has determined the need for an inquest pursuant to AS 12.65.020. A requirement that autopsy reports should be public records simply because the person had not recently seen a physician, seems to serve no apparent public good.

2. Page 5 Lines 19-20
Subsection (f) should include an exemption for medical records and read as follows:

(f) Unless specifically exempted from disclosure by statute, all records except those specified under (c) of this section, become public after they are 20 years old.

Rational: Patient medical records are private and ought be disclosed only at the direction of the person subject to the record.

3. Page 6 Lines 3-7
Subsection (i) ought to be rewritten to include only managerial positions where the person has discretionary power over the operation of the entity and the reference to job performance and ability to perform the job ought to be struck.

Rational: Governmental employees ought not be treated differently than non-governmental employees unless there is a specific public good to be served. We can see no good and potential exposure to harassment by the disclosure of the compensation of a cook, janitor, clerk, nurse or other non-management personnel. The references to job review and abil'ty to perform is a type of information exempted under (3)-(8) of Section .015 and as such ought to be protected for public employees as well.

Thank you for your consideration of these items. We will be happy to respond to any questions you may have

Sincerely,

Dennis L. DeWitt
Executive Director

DLD/b

cc: Senator Vic Fischer

Work Draft

COMMENTS ON SB 90 entitled "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Page 1 - No suggested changes

Page 2

line 16 - add the words "in person" (2 comments)

line 17 - add "The request can be made verbally or in writing."

beginning line 19 through 22 - a fee should be charged for searching for the records

bill should permit municipalities to establish a charge for documents which does not exceed the actual cost of producing and duplicating the documents.

establish a uniform fee schedule similiar to the regs proposed by the governor. - 20 pages free within a 24 hour period

Less than 100 copies free - Commissioner of Administration shall by regulation provide a method by which indigent persons may secure information without payment of fees.

Fee should be waived in the public interest.

Fees should not be used to discourage the public

Fees currently charged are prohibitive.

line 25 - add federal law or regulation

add "or required to be kept confidential by federal law or regulation

Page 3

lines 19 through 21 - Include "applicants" ; expand social services to include public benefits

lines 22 through 25 - exemption too broad; should be deleted (2 comments)

Page 4

lines 5 through 8 - Who decides what are trade secrets, etc?

lines 9 through 10 - Current driver's manual contains sample questions which are in some cases, actual questions on drivers license test.

line 11 - "intelligence" needs to be defined.

Excludes those records prepared by a police officer at the time the original action is taken.

Excludes original entry police records - doesn't allow the press to be a watchdog to see that police do not violate civil rights.

Do not alter section; must be read in tandem with page 6, line 8 through 12.

Page 5
lines 1 through 6 - Who makes the decision?

line 29 - rewrite subsection (h) to read:
(h) The exceptions provided under this section do not preclude

(1) production and release of subpoenaed records or information to a state or municipal agency during the course of an investigation;

(2) production and release of records to the ombudsmanwhen requested during the course of an investigation by him; records released to the ombudsman shall be kept confidential by him while the records are in his custody, except the ombudsman may, upon prior notice to the agency, release the records to the court for in camera review pursuant to AS 40.25.025(d).

Page 6
lines 3 through 7 - Oppose access to an employee's record of current performance on the job. (3 comments).

Each municipality should make the decision on personnelrecords.

beginning line 27 - ....the records shall be made [promptly] available to the person making the request within 10 days of the receipt of the request.

.....as soon as practible but no more than 10 days.

Must allow for 10 days because it places the request over all othergovernment business.(2 comments)

Page 7
lines 1 through 11 - the use of the word "suitable" is too vague. Should use Federal FOIA "reasonable segregability".

Any governmental unit that is applying an exemption should be required to include a packet of instructions, including the form drawn up by the Superior Court, on how to proceed in court without counsel to challenge the exemption.

lines 15 through 29 - smaller communities don't have Superior Court Judge full time. Suggestion that the magistrate's office do initial paperwork.

line 26 - change to "actual" attorney fees.

Page 8
line 25 through 29 - Who is the "head" of a governmental unit? What is an a "agency? If an agency is a department, the commissioner woul l be the "head"; if agency means the division, the director would be the "head". Who is the "head" of for example, the Human Rights Commission - the Executive Director or the Chair?

Would you need a "designee" in each office location - for example, an employee in Fairbanks Natural Resources office need to contact a designated custodian in Anchorage before releasing a record?

Page 8 con't
line 7 - case should be heard as a priority matter. 10 - 30 days maximum to hear trial.

line 16 - change reasonable to actual attorney fees and other actual litigation costs.

line 27 - definition of "governmental unit" should include "governmental instrumentality", "public corporation", "REAA" and "independent contractors paid with government funds but limited only to those activities related to the government contracts."

Page 9
line 11 - include "computer maintained records and information stored in a computer system"

line 24 - What is a "public body?" Would, for example, this section apply in a meeting between several state agencies and the U.S. Army?

beginning at line 28 - delete entire section - Repeals present authority of state or local government body to go into executive session to discuss matters which are required or authorized by federal law to be discussed in executive session. Would also repeal the present authority of municipalities to establish by charter or ordinance additional subjects which may be discussed in executive session. (Above supported by Juneau, Kodiak, Nome and Municipal League)

OTHER COMMENTS

Exempt municipalities (Kodiak, Juneau, Municipal League)

Don't exempt municipalities (8 comments)

Allow municipalities to opt out after adopting similar ordinance.

Include an Administrative Appeal process.

Define "right to privacy" and "unjustifiable intrusion into a person's right of privacy."

Someone who would be adversely affected by disclosure of an arguably exempt record should be allowed to intervene in a case involving the application of an exemption.

Change pronouns to read he/she, him/her

Witnesses will not be protected if names, addresses & other personal info can be given to the public.

Recommend preparing poster to be hung in each office - 1) how to request info; 2)cost per page; 3) public's right to know; 4) what to do for enforcement.

Each governmental unit should be required to keep a file of letters of denial that should itself be made public.

Burden of proof should rest with the governmental unit. Presumption in favor of disclosure

Preliminary labor negotiations should be private.

Public is not even aware of what is available.

Public will be paying additional "thousands of dollars" to staff a government unit to produce these records.

Page 10, Section 4 - good faith defense should be clearly limited as applying only to impairing the availability of a public record.

OFFICE OF THE FEDERAL INSPECTOR
ALASKA NATURAL GAS TRANSPORTATION SYSTEM
POUCH 6619, ANCHORAGE, ALASKA 99502
907-271-3668

4 Feb 1981

The Honorable Vic Fischer
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Fischer:

The State Affairs Committee is holding public hearings on Senate Bill No. 90 introduced by you, Senators Parr, Stimson and Rodey. The Office of the Federal Inspector, Alaska Natural Gas Transportation System (ANGTS) has reviewed the bill and urges the State Affairs Committee to consider its comments. AS 09.25.120, one of the statutes which would be repealed by SB 90, sets out various exceptions to public disclosure. One category of documents excepted from public disclosure by AS 09.25.120 is "documents required to be kept confidential by a federal law or regulation..." This exception should be included in any legislation addressing freedom of information in this State.

This exemption is important both to the current Alaska natural gas pipeline construction project and to other relations with the federal government. The State Pipeline Coordinator's Office and the Federal Inspector's Office enjoy a free flow of information between them which helps both agencies to adequately monitor construction of the gasline. The State and the Federal Inspector's Office are negotiating a joint agreement which in part addresses the confidentiality of documents exchanged between them, and the agreement depends on the existence of a State statute exempting such documents from public disclosure. Any change will jeopardize this interchange of documents between the Federal Inspector and the State Pipeline Coordinator.

With these concerns in mind, the Federal Inspector's Office recommends that the legislature clearly include this exemption in SB 90 by changing the proposed Sec. 40.25.015(e)(1) to read as follows:

(1) Those exempted from disclosure by State statute or required to be kept confidential by federal law or regulation;

Thank you for the opportunity comment on SB 90.

Sincerely,

Cheri C. Jacobus

Cheri C. Jacobus
Attorney

Alaska Newspaper Association

c/o Box 710, Fairbanks, AK 99707

FOUNDING MEMBERS
Incorporated Dec. 6, 1980

ROBERT B. ATWOOD
The Anchorage Times

KATHERINE FANNING
Anchorage Daily News

LOREN STEWART
Cheechako News, Kenai

MAX SWEARINGEN
Peninsula Clarion, Kenai

GLEN COBB
The Frontiersman, Palmer

TOM GIBBONEY
Homer News

JIM C. MARTIN
Alaska Journal of Commerce

G. KENT STURGIS
Fairbanks Daily News-Miner

LEW WILLIAMS
Ketchikan Daily News

CARL SAMPSON
Juneau Empire

TOM SNAPP
Alaska Weekly

January 27, 1980

Sen. Vic Fischer, chairman
State Affairs Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Senate Bill 90

Dear Sen. Fischer:

I'm unable to attend your committee's hearing Thursday on SB90, the FOI and privacy bill, but wanted you to know our organization will be following this legislation closely and look forward to helping improve it.

Also, we appreciate the fact you have demonstrated the importance of the FOI-privacy issue by scheduling a hearing so early in the session.

The Alaska Newspaper Association has not taken a position on SB90 but is encouraging its members to study the measure and offer comments and suggestions on an individual basis. In the meantime, we endorse the suggestions made by Prof. Dean Gottehrer of the Alaska Freedom of Information Task Force, of which the ANA is a member.

Generally speaking, it's our belief SB90 is a step in the right direction.

Thank you again.

Sincerely,

Kent Sturgis

Kent Sturgis, chairman
ANA Legislative Committee

cc: Kay Fanning, Anchorage
Dean Gottehrer, Fairbanks

JUNEAU EMPIRE

WILLIAM S. MORRIS III
PRESIDENT and PUBLISHER

JEFFREY A. WILSON
GENERAL MANAGER

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FRED HOWARD
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TOM BLUMENSHINE
Production Manager

Speak for yourself

Whether they were based on his experiences or on some other wisdom, we believe Juneau City-Borough Attorney Lee Sharp's testimony on a state freedom of information bill was an affront to the city-borough assembly and the people of this municipality.

According to Mr. Sharp's opinion, city officials and no one else should determine which information is open to the public. For the purposes of freedom of information, municipalities are not a part of the state of Alaska, says Mr. Sharp. Rather, they are independent feifdoms in which local assembly members can open and close local records at will. This feudal concept of freedom of information position has consistently been rejected by state courts. Nevertheless, Mr. Sharp continues to insist it is a viable modus operandi for local governments.

We couldn't disagree more. Local governments receive a major portion of their funding from the state. In fact, local governments are created by the state. In every area we can think of, local governments must comply with state law. According to Mr. Sharp's position, however, local governments should be free to close all of their records, if they so desire.

That simply isn't a proper way to run a government. The city-borough government, as well as the state and federal governments, are governments of the people. To argue a group of elected or appointed government officials can combine to hide information from the rest of the people is a concept we and all Alaskans must reject outright, with very few exceptions.

As Mr. Sharp fully knows, according to current state law, "The people, in delegating authority, do not give their public servants the right to decide what is good for them to know and what is not good for them to know." It is the law which includes that statement which Mr. Sharp seeks to

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repeal on the local level.

Generally speaking, the local city-borough assembly has been relatively responsive to freedom of information requests — especially after they were taken to court and lost. Last summer, the Juneau Empire was forced to seek a preliminary injunction against the city-borough to obtain public information, the names and qualifications of applicants for city-borough manager, police chief and fire chief. At the urging of Mr. Sharp, the assembly and city-borough manager had refused our requests.

As occurred in the three previous statewide cases and one since, the preliminary injunction ordering the city-borough to hand over the applicants was granted over the protests of Mr. Sharp.

Now we find Mr. Sharp advocating that municipalities be given the right to exempt themselves from any state freedom of information law. And, shockingly, some members of the city-borough assembly — Mr. Sharp's bosses — were unaware of his anti-freedom of information lobbying efforts. At least one city-borough assembly member told us the assembly at no time has discussed or laid out a position on the subject.

"I didn't agree with what he said, and it (Sharp's testimony) doesn't represent my position ... I would hope it does not represent the assembly's position," said Assembly member Dianne Bergstrom.

According to City Manager Carl Laird, "It hasn't been brought up at an assembly meeting ... the assembly (members) are the policy-makers. I'm not going to get involved in a policy decision."

Therefore, we can only assume that Mr. Sharp's comments are either his personal opinions or the official position of the assembly. If they are his personal opinions, he has no right spending city-borough time—and money—by offering them. If they are not the assembly's official position why are they being offered as such?

As far as we have been able to determine, the assembly has not adopted an official policy on freedom of information.

Until the assembly publicly discusses and adopts a position on the freedom of information bill, we have some respectful advice for Mr. Sharp: speak for yourself.

JUNEAU EMPIRE

AN INDEPENDENT NEWSPAPER

Published daily, Monday through Friday, except [illegible] by the Juneau Newspapers Corporation [illegible] Second St. Juneau, Alaska 99801

Second Class postage paid at Juneau, AK

Postmaster: Send address changes to JUNEAU EMPIRE 231 Second St. Juneau, AK 99801

TELEPHONE

Business Office 586-3740

Circulation 586-3744

Member of the AP wire and NEA news services. Represented for national advertising by Brandon Holmes, Inc., 420 First Avenue West, Seattle, Washington 98101. Phone (206) 284-0270

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Black

A black child still lacks and contribute in America

So asserts the Children's advocacy group, in a new Black and White Children findings:

— Millions of black ch health care. As a result, th handicaps that could have

— Blacks are twice as year of life, twice as lik times as likely to be unem

— One out of every tw One in four lives in subs never seen a dentist and o health care. Two out of fiv are not immunized against

This pathology is compo assumption that the gap America was closed durin

"Millions of black child rees began in the 1960s an says Marian Wright Ede Defense Fund. "Unless im meet black children's nee

Presi of re

By DONAL AP P

WASHINGTON (AP) — Ro a rush of visual and verbal

There was the new presi Cabinet welcoming the freed his first news conference. A forming the nation's military

The opening scenes were

Now, though, comes the a the first test of the credibilit tion's problems — and how fighting the good fight agai

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At his first news conferenc plagued him during the presi "trigger happy."

Now that the hostages are revenge for their long ordeal Reagan was the voice of r "I don't think revenge is v Restrained toward Iran, I

CHARLIE PARR

ALASKA LEGISLATURE

S. R. Box 50599
Fairbanks, Alaska 99701
456-5029

Pouch V
Juneau, Alaska 99811
465-4908

January 29, 1981

M E M O R A N D U M

TO: Senator Vic Fischer, Chairman
Senate State Affairs Committee

FROM: Senator Charles H. Parr CHP

SUBJECT: Senate Bill No. 90

The following is a brief summary of the key points in SB 90 relating to privacy and public information.

Section 010 gives the State policy of openness, and is also found in existing statutes dealing with the open meeting clause.

Section 015 provides that all records are open to inspection and copying, and provides that fees must be limited to reasonable costs of duplication.

Beginning with (e) at page 2, line 23, there is a list of items which are exempted from disclosure. These may be grouped as protecting the right of privacy guaranteed in the Alaska Constitution, or as matters of public policy where the Legislature has found the greater benefit to be withholding information.

Section 020, beginning on page 6, provides that a record which can be made open by deleting certain confidential parts will be released after the deletions are made. It also says that refusal to release records must be made in writing.

Section 025 establishes a mechanism for obtaining a court order to require the government agency to release the information. A court may examine the records in camera to determine whether they should or should not be released.

Section 035 gives a civil cause of action against a person wrongfully withholding records, and protects the person who is withholding them in good faith.

Section 040 is the definition section.

Sections 2 and 3 of the bill, beginning on page 9, line 22, deal with the State open-meeting law and remove the authority of a municipality to hold executive sessions other than in accordance with State law.

CHP:vc

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

TO: Nancy Groszek, Staff Member, Senate State Affairs Committee

FROM: Dean M. Gottehrer, Alaska Freedom of Information Task Force
P. O. Box 74573, Fairbanks 99707

Society of Professional Journalists

Farthest North Chapter
Box 74573
Fairbanks, Ak. 99707

Sigma Delta Chi

January 26, 1981

Members
Senate State Affairs Committee
Alaska State Legislature
Juneau, Alaska

Dear Committee Members:

On behalf of the Alaska Freedom of Information Task Force, I thank you for the opportunity to submit written testimony on Senate Bill 90. The FOI Task Force was organized by the Farthest North Chapter of the Society of Professional Journalists and numbers nearly 40 members, among them most of the state's daily newspapers, many weekly papers, broadcast stations, magazines and other media organizations. The Task Force is dedicated to seeking the passage of a Freedom of Information bill that will bring government out of the shade where the people's business is being hidden and keep it in the sunshine where that is presently the case.

I have urged our members to judge any proposed legislation against the current law. On that standard I believe SB 90 rates high. It includes all branches of state government, covers municipal and borough governments and provides for speedy access to inspect government documents. Generally, it sides with free and open government so that the people may know what is being done in their name. For the most part the exclusions listed in the bill are rational and legitimate and balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

There are, however, some areas of the bill we would like to see changed. Presently the bill contains no definition of the right of privacy. We believe the legislature, following the constitutional mandate should define that right. We suggest the following definition from the Restatement of Torts. Privacy is that right of an individual to be protected against publicity of a matter concerning that individual's private life when the matter publicized is of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

We believe the exclusion listed in Sec. 40.25.015 (a)(3) should be stricken from the bill. It is of such a general nature that most records the legislature would probably want public could be withheld under that exclusion. Sec. 40.25.015 (13) concerns us for two reasons. First, it potentially excludes original entry police records--those documents completed when a suspect is taken into custody. One of the roles of the press historically has been to see that no individual is held by the police unjustly and closing original entry records makes that a much greater potential hazard. Second, (C) of (13) speaks of an unjustifiable intrusion into a person's right of privacy. If that language is to remain here and in other sections of the bill we believe a definition is needed of what is a justifiable intrusion. Since that seems almost impossible, we would prefer to see

that language removed. We don't want to see the police or other governmental unit employees left with the impression that anything unflattering is private.

In a suit for disclosure, the burden of proof should rest with the governmental unit to prove it was required not to release requested information. The courts should be instructed to presume in favor of disclosure.

Each governmental unit should be required to keep a file of letters of denial of information requests that should itself be public. This would allow easy monitoring of governmental units to determine whether they are complying with the law.

The bill does not clearly include computer maintained records as it should. The section defining records should be amended to include "information stored in a computer system." Independent contractors paid with government funds should also be included in the bill's coverage. The definition of governmental unit should include "independent contractor paid with public money in whole or in part and under the supervision of any of the above groups or units."

Whether the state should charge for document copies and how much is a question that has plagued us for some time. Some members believe the media should not be charged since they are doing the public's business when requesting documents while researching a story. Others are willing to pay. No one, however, believes a governmental unit should charge more than the actual copying cost. The method contained in the Governor's proposed regulations is a good compromise. Each requestor receives 20 pages free of charge in any 24 hour period. Above that the charge is 10 cents per page. Currently a great variety of charges exists among agencies. It would help all if the Legislature standardized these charges.

Finally, one last concern. Sec. 4 of the bill on page 10 makes a good faith reliance on AS 40.25 or other law governing confidentiality of public records a defense against the crime of tampering with public records. This defense should be clearly limited as applying only to impairing the availability of a public record and not to any of the other actions listed in AS 11.56.820.

The task you have before you is not an enviable one. You will be urged to exclude this or that branch of government, this or that agency, one or another of a multitude of types of records from coverage under the bill. As you address each of these requests, I ask that you recall that all of these governmental units exist because they are supported with public monies. The public has a right to know what is being done with these funds. Government in the sunshine is best for all people. Keeping government open primarily benefits the people--not the media. Remember that 75 percent of all requests under the federal freedom of information laws come from non-media sources and only 25 percent from the media.

Sincerely yours,

Peggy M. Fletcher
Chairman
Alaska Freedom of Information Task Force

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

1/28/81

SENATE STATE AFFAIRS

COMMITTEE MEETING SCHEDULE

TUESDAY — Feb. 3
1:30 p.m.

EXEC. ORDER #48
Relating to the transfer of the Alaska Council on Science and Technology from the Department of Environmental Conservation to the Department of Administration.

Hearing

SENATE BILL 54
"An Act relating to the Alaska National Guard and Naval Militia; and providing for an effective date. "

Hearing

SENATE BILL 72
"An Act relating to veterans and public records. "

Hearing

THURSDAY — Feb. 5
1:30 p.m.

SENATE BILL 90
"An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure. "

All-sites teleconference hearing

ALL HEARINGS WILL BE CONDUCTED IN THE SENATE STATE AFFAIRS COMMITTEE ROOM, BEHRENDS BLDG., FIRST FLOOR. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT SEN. FISCHER'S OFFICE (465-4954,4955).

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 90
Title "An Act relating to privacy and public information; and changing Rule 6 of the Alaska Supreme Court Rules of Civil Procedure."
Requested by Sen. Fischer Date

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Legal Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

GENERAL FUND	Ø	Ø	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

None of the Department of Law's BRU's, Legal Services, Prosecution and Consumer Protection, expect that any significant fiscal impact would result from the passage and implementation of SB 90.

IV. DATE January 21, 1981 PREPARED BY Richard I. Pegues
AGENCY Department of Law
PHONE 465-3695

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

January 28, 1981

Senator Victor Fischer
and Members
Senate State Affairs Committee
Pouch V
Juneau, AK. 99811

Subject: SB 90

Dear Senator Fischer:

In his Third, and again in his Sixth Annual Report to the Hawaii Legislature, Ombudsman Doi has noted increased interest and involvement of people in their government. Citizens have encountered two primary areas of difficulty in their attempts to learn about the workings of government through the inspection of records and files: 1. access to some records is denied, and 2. excessive delays occur before the records are released. The experience of the Alaska Ombudsman office has been similar.

Mr. Doi points out that "the less information is shared, the more power those that possess such information retain for themselves." He takes the position, as does the Policy section of SB 90, that "democratic institutions are founded on the promise that information should be shared among the citizenry and their representatives for decision-making purposes." In arguing for freedom of information legislation, Ombudsman Doi urges

--that governmental records and materials be open to the fullest extent possible,

--that exclusions be limited, be specifically listed and strictly defined, and be legislatively authorized,

--that strict time limits be established within which agencies either provide requested records or formally deny a request,

--that prompt and covenient appeal procedures be available,

--and that fair and uniform fees for reproduction of written documents be charged.

We agree with these guidelines and support SB 90 in its attempt to strengthen the people's right to information about their government.

Freedom of information complaints to the Alaska Ombudsman office include:

--Veterans Affairs' denial of the request of a son, with his father's general power of attorney, to inspect the father's loan payment history

--Motor Vehicles' charging of $2 for the name and address of the registered owner of a vehicle, when the complainant didn't want a copy of any document

--Administration Personnel's denial of copies of preliminary studies leading to a position reclassification

--ASHA's refusal to give a resident a copy of an incident report concerning an altercation she had been involved in

--Division of Social Services' refusal to permit prospective foster parents viewing of personal references written about them

--DOT's refusal to provide a citizen with a copy of the tape of a public meeting for use on a radio broadcast (they would provide a transcript)

Although some of these complaints have been found to be justified, and others unsupported, they serve to exemplify the spectrum of types of information sought and the number of different agencies involved.

With regard to SB 90, the following specific suggestions and questions are offered for your consideration:

page 2 line 25
(1) those exempted from disclosure by state statute (;), federal law or regulation

This language is closer to the current AS 09.25.120 (4) and should preclude conflicts between federal and state laws.

page 4 lines 5 and 6
Who decides what are "trade secrets, privileged information, and confidential commercial, financial, geological or geophysical data?"

page 4 lines 9 and 10
The current drivers manual contains sample questions which are, in some cases, actual questions on drivers license tests.

page 8 lines 25 through 29 and page 9 lines 1 through 7
Who is the "head" of a governmental unit?" What is an "agency?" If an agency is a department, the commissioner would be the "head;" if agency means a division, the director would be its "head."

Who is the "head" of, for example, the Human Rights Commission -- the Executive Director or the Chair?

Should it be required that there be "designees" in each office location, or will, for example, an employee in the Fairbanks Natural Resources

office need to contact a designated custodian in Anchorage before releasing a record?

In the definition of "governmental unit" perhaps "governmental instrumentality," "public corporation," and "REAA" should be specifically included.

page 9 line 24
What is a "public body?" Would for example, this section apply in a meeting between several state agencies and the U.S. Army?

More generally, you may wish to include an administrative appeal prior to filing an action in court to compel the release of records. Such an appeal would require a different decision maker and strict adherence to reasonable time frames.

Also, the legislative adoption of a uniform fee schedule similar to that proposed by the Governor might be advisable. This proposed regulation provides for the copying of 20 pages free within a 24 hour period, and a fee of 10¢ for each additional page.

Our most pressing concern, however, is the repeated use of "right to privacy" in this proposed legislation. Absent any attempt at definition or case law clarifying this Constitutional protection, we are left only with case by case interpretation. The diversity of opinion is particularly evident in responses from the Attorney General's Office on cases arising from Ombudsman complaints.

In opinions issued on April 1, 1979 (concerning release of mailing lists of those receiving senior citizen property tax exemptions to a senior citizen organization) and on February 21, 1980 (concerning the release to Legislators of the names of those receiving Longevity Bonus payments) an Assistant Attorney General advised that the former be denied, while there was no privacy issue in the latter. He argued that there would be no anxiety or embarassment caused to Longevity Bonus recipients if their names were to be released to members of the Legislature, whereas it would violate the privacy of senior citizens claiming property tax exemptions if a list of their names and address were released. When in doubt, this opinion states, it is better to err on the side of non-disclusure. A factor in the senior citizen decision was the possible use of the list by vendors.

On a similar issue, and on the basis of the same legal advice, the Division of Retirement and Benefits has refused to relase a list of TRS retirees to a retired teacher organization. The division explains that although this group might not "misuse" the list, it if were released to one organization, how could the division refuse to provide it to another which might put it to questionable use.

In another opinion issued July 31, 1978 on the release of the name and address of the registered owner of a motor vehicle (attached), the

same Assistant Attorney General argues that despite the absence of current statutory language allowing the keeper of a record to inquire as to its possible use, the Attorney General's office has taken the position that right of privacy takes precedence over freedom of information. "When the two come in conflict, the keeper of the records can facilitate or cause a person's privacy to be invaded only to the extent that a legitimate public interest requires it." He concludes that the release of motor vehicle registration information is generally "harmless," since "persons requesting the information will have an interest sufficient to justify the information's release..." Absent "any pattern of misuse of information or any serious or persistent problem," the opinion finds that "the statute controls" and the information is public. "We do not believe that...administrators have the authority to carve out their own exceptions from the statutory dictates of AS 09.25.110." Yet this is exactly what he has advised the Department of Community and Regional Affairs and the Division of Retirement and Benefits to do in the previously cited opinions.

We expect ultimate resolution of these differing interpretations to come through litigation, perhaps to be facilitated by the simplified civil procedures in SB 90. They are brought to your attention as a reminder of just how gray the "right to privacy" area is and, therefore, how subject to individual interpretation the sections in SB 90 which use this language will be.

Sincerely,

for Frank Flavin
Ombudsman

Attachment

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL JUNEAU 99811

July 31, 1978

Mr. Francis M. Flavin, Ombudsman
340 'K' Street, Suite 203
Anchorage, Alaska 99501

Re: Ombudsman Complaint
#A78-0655 (license
plate information)
Our File: J-66-787-78

Dear Mr. Flavin:

Your letter to the Attorney General on this matter has been referred to me for reply. The issue presented is whether the adoption of the Privacy Amendment to the Alaska Constitution, art. I, § 22, impliedly amended AS 09.25.110. */

Often called the Alaska Freedom of Information Act, AS 09.25.110 **/ provides generally that, absent a "specific" dictate to the contrary, all public records are open to public inspection and copying. Nothing in the section requires (or

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*/ A threshold question is whether AS 44.23.020 allows the Attorney General to provide the Ombudsman with legal advice. We believe that, as an agency of the legislature, AS 24.55.110, the Office of Ombudsman is entitled to a written legal opinion under AS 44.33.020(b)(4). Even in the absence of that statute, the Attorney General's common law powers would appear to authorize the opinion. Public Defender Agency v. Super. Ct., 1st Jud. Dist., 534 P.2d 947 (Alaska 1975).

**/ The section reads as follows:

> Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

even authorizes) the keeper of the records to inquire into the bona fides of the request for a record or other information. Nothing in the section allows the keeper of the records to reject a request simply because he doubts that it is legitimate or even if he is convinced on the basis of the information available to him that the request is illegitimate. The statute is Kantian in its dictate. If a rapist asks for a girl's name and address, under the statute's plain language, the keeper of the records must reveal them.

This office has, however, consistently rejected the Kantian formulation and taken the position that the constitutional right of privacy takes precedence over the Freedom of Information Act. When the two come in conflict, the keeper of the records (the state) can facilitate or cause a person's privacy to be invaded only to the extent that a legitimate public interest requires it. Falcon v. A.P.O.C., 570 P.2d 469 (Alaska 1977). Hence, if a public release of information would result in a disclosure which would stigmatize one or subject one to opprobrium or otherwise disclose matters which an ordinary, reasonable person would prefer remain private, then there must be a legitimate public interest in releasing the information sufficient to justify the invasion of privacy before the information can be released. Falcon v. A.P.O.C., supra; cf., Ravin v. State, 537 P.2d 494 (Alaska 1975) (balancing of interests).

With respect to motor vehicle registration, as a general rule, the release of the information is in itself harmless. The probability of serious misuse does not appear to be great. The likelihood of potentially obnoxious use (e.g., an unsolicited offer to purchase) does not appear much greater. As a general rule, persons requesting the information will have an interest sufficient to justify the information's release, i.e., hit-and-run victims, seekers of witnesses to accidents, junkyard dealers, auto towers, and creditors. Even a would-be, albeit unsolicited, purchaser has a legitimate interest. */ No one has suggested that there is any pattern of misuse of

*/ We cannot agree with your assumption that the only legitimate use of registration information is to futher its major purpose, i.e., revenue and law enforcement. It is, for instance, used to establish ownership. AS 28.10.560; State Farm Mut. Auto Ins. Co. v. Clark, 397 F.Supp. 745 (D. Alaska 1975).

information or any serious or persistent problem in the misuse of information which would support an imposition of administrative restrictions on the release of information under AS 09.25.100 and 110. If such a pattern or problem existed, then the protections of the Privacy Amendment could be invoked. But absent both, the statute controls.

It would certainly be possible, if it chooses to do so, for the legislature to amend title 28 to provide for the administrators to devise regulations or forms for protecting motor vehicle registrants (and others) from constitutionally permissible but nevertheless unwanted intrusions into their privacy. We do not believe that, absent a change in the law or the existence of an actual and serious problem involving someone's privacy, the administrators have the authority to carve out their own exceptions from the statutory dictates of AS 09.25.110. That would be a real abuse of discretion, an abuse which you would, undoubtedly, soon be called upon to examine.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Rodger W. Pegues
Rodger W. Pegues
Assistant Attorney General

RWP:md

PROPOSED AMENDMENTS TO SENATE BILL NO. 90

January 29, 1981

Proposed by:
Bruce Horowitz, Supervising Attorney
Alaska Legal Services Corporation
419 6th Street, Suite 322
Juneau, Alaska 99801
(907)586-6425

* § 40.25.015(d) should be amended, as follows: [p. 2]

(d) The commissioner of administration shall prescribe a uniform schedule of fees to be limited to reasonable standard charges for document duplication, and provide for recovery of [ONLY] the direct cost of the duplication only when more than one hundred copies per request are made. The commissioner of administration shall by regulation, provide a method by which indigent persons may secure information with payment of fees.

* § 40.25.015(e)(7) should be amended, as follows: [p. 3]

(7) personal information in files maintained on applicants for, or recipients of, social services or public benefits, except that access may not be denied to the person who is the subject of the records, or his designee;

* § 40.25.020(b) should be amended by adding to the last sentence, as follows: [p. 6, beginning line 27]

... Upon a determination by a governmental unit to comply with a request for records, the records shall be made [PROMPTLY] available to the person making the request within ten days of the receipt of the request.

* S 40.25.020(c), should be amended, as follows: [p.7]

(c) When the lawful custodian of the record determines that contents of a record exempt it under the provisions of AS 42.05.015, he shall delete the exempt contents and release the remaining contents of the record [ALSO DETERMINE WHETHER A DELETION OF THE EXEMPT PARTS OF THE RECORD WILL MAKE THE RECORD SUITABLE FOR RELEASE, AND, IF SO, THE DELETION SHALL BE MADE AND THE RECORD RELEASED], with the notation that exempt material has been removed. If the custodian determines that the record, or a portion of the record, is not open to inspection, he shall, in a certified writing, inform the person requesting the records of his determination, of the statutory basis for this decision, and that under AS 40.25.025 a suit may be brought to compel production of records that are improperly withheld.

* S 40.25.025 (b) should be amended in the last sentence, as follows: [p. 7, beginning line 26]

... If the applicant is granted the injunction, he shall be entitled to recover costs and [REASONABLE] actual attorney fees from the governmental unit.

* S 40.25.025 (d) should be amended in part, as follows: [p. 8, beginning line 7]

... In such a case the court, as a priority matter, shall determine the matter de novo, and may examine the contents of any records in camera to determine whether any of the exceptions set out in AS 40.25.015, and the burden is on the agency to sustain its action

* § 40.25.035(a) should be amended, as follows: [p. 8]

(a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to cover actual damages and [REASONABLE] attorney fees, and other reasonable litigation costs.

Need: Definition of "Privacy".

Introduced: 1/15/81
Referred: State Affairs and Judiciary

IN THE SENATE

BY PARR, FISCHER, STIMSON AND RODEY

SENATE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 40 is amended by adding a new chapter to read:

CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

Sec. 40.25.010. STATE POLICY. It is the policy of the state that

(1) all governmental units exist to aid in the conduct of the people's business;

(2) the people of this state do not yield their sovereignty to the agencies which serve them;

(3) the people, in delegating authority, do not give their public servants the right to decide what is best for the people to know and what is best for them not to know;

(4) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(5) the people's right to privacy as provided by the constitution is recognized and shall not be infringed;

(6) the records of governmental units shall be open for public inspection unless the inspection infringes on a person's right to privacy or is otherwise prohibited by statute.

Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION; EXCEPTIONS. (a) Except as otherwise specifically provided by statute, all records are open to inspection and copying by any person during the regular

office hours of the lawful custodian of the records or his designee, unless the inspection infringes on a person's right to privacy. The custodian of the records shall take all necessary precautions for their preservation and safekeeping.

(b) Every custodian of records shall make them available for public inspection and shall give a copy of the record on request and payment of fees, if any. A custodian shall permit memoranda, transcripts, and copies of the public writings and records in his office to be reproduced in any reasonable manner. In addition, a custodian shall furnish proper and reasonably accessible facilities for inspection of records, subject to reasonable restrictions, as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the custodian and his employees. If a certified copy is requested, that copy is in all cases evidence of the original.

(c) Copies of records may be requested by telephone, electronic communication, or by mail. These requests shall be treated in accordance with the provisions of (a) and (b) of this section.

(d) The commissioner of administration shall prescribe a uniform schedule of fees to be limited to reasonable standard charges for document duplication, and provide for recovery of only the direct cost of the duplication.

(e) The following records are excluded from the provisions of this section:

(1) those exempted from disclosure by state statute;

(2) any tax or information return, or record or report relating to that return, which is required to be filed in accordance with the provisions of AS 43 or municipal ordinance, except that access may not be denied to the person who is the subject of the records, or that

person's designee;

(3) subject to (i) of this section personal information in files maintained on public employees, except that access may not be denied to the person who is the subject of the records, or that person's designee;

(4) personal information in files maintained on students in public schools, except that access may not be denied to the student, a parent or guardian of the student, a person responsible for supervising the student, or his designee;

(5) personal information in files maintained on students at the University of Alaska, except that access may not be denied to the student or his designee;

(6) personal information in medical, psychological, and sociological files maintained on individual persons, exclusive of autopsy reports, except that access may not be denied to the person who is the subject of the record, or his designee, or to the parent or guardian of a minor who is the subject of the record except where this access would violate the physician-patient privilege;

(7) personal information in files maintained on recipients of social services, except that access may not be denied to the person who is the subject of the records, or his designee;

(8) personal information similar to personal information in files under (3) - (7) of this subsection, except that access may not be denied to the person who is the subject of the records, or that person's designee;

(9) archival materials donated by natural persons to the extent of any written limitations placed on them as a condition of the contribution; however, all archival materials become public information after not more than 50 years and any statement of limitations must be

produced upon denial of access;

(10) circulation records maintained by public libraries, public school libraries, and University of Alaska libraries showing personal transactions by those borrowing from them;

(11) trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished in compliance with state statute or regulation, or in compliance with a municipal ordinance;

(12) test questions and answers to be used in a future license, employment or academic examination;

(13) intelligence, investigatory and original entry records, maintained by state or municipal law enforcement agencies, or any other governmental unit, but only to the extent that the production of the records would

(A) interfere with enforcement proceedings;

(B) deprive a person of a right to a fair trial or an impartial adjudication;

(C) constitute an unjustifiable intrusion into a person's right of privacy;

(D) disclose the identity of a confidential source and, in case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, confidential information furnished only by the confidential source;

(E) disclose investigative techniques and procedures;

(F) endanger the life, property, or physical safety of a person;

(G) identify a victim of a criminal sexual assault;

(H) disclose any information otherwise exempt under this chapter or state statute;

(14) records of security systems and procedures established for the purpose of the protection of persons or property, or securing a penal institution or place of detention of persons accused or convicted of a crime or persons under the jurisdiction of the court under AS 47.-10, but only to the extent that disclosure would compromise the effectiveness of the system;

(15) attorney work oduct in the possession of a governmental unit, until the matter occasioning the preparation of the work product is closed;

(16) any notes, memoranda, draft decisions, opinions, or other similar documents prepared by a justice or a judge, or a person working under his supervision, in the process of deciding any legal issue; however, once the legal issue has been decided all notes, memoranda, draft decisions, opinions, or similar documents become public records under rules established by the supreme court;

(17) records related solely to the internal practices of a governmental unit where the effect of disclosure would be to enable law violators to escape detection.

(f) Unless specifically exempted from disclosure by statute, all records become public after they are 20 years old.

(g) Information contained in records exempted from disclosure under (c) of this section may be released for valid statistical or other information-gathering purposes if

(1) any information which would tend to identify the person to whom the record pertains is deleted; and

(2) disclosure is made in a manner which would not compromise or defeat the purposes of any statute designed to maintain the confidentiality of the information.

(h) The exceptions provided in this section do not preclude the

release or production of subpoenaed records or information to a state or municipal agency during the course of an investigation;

(i) All personnel records showing salary or compensation or that concern the employee's current performance or ability to perform the duties and responsibilities of his job shall be open for public inspection. This public access is not an infringement of a person's right to privacy.

(j) The fact that a crime has been committed, the name of the crime, the time of commission and location, the name of any victim (unless the victim of a criminal sexual assault) and the name of any person who is charged with the crime is a matter of public information and record, except as provided in AS 47.10.090.

Sec. 40.25.020. REQUESTS FOR RECORDS. (a) Each governmental unit, upon any request for records made under this section, shall

(1) produce the record immediately; or

(2) if the record is in active use or storage and not available at the time a request to examine it is made, the custodian shall at that time state this fact in writing to the applicant and the applicant may set a date and hour at which the record may be examined.

(b) A person making a request to a governmental unit for records under this section is considered to have exhausted his administrative remedies with respect to the request if the governmental unit fails to comply with this section. If the governmental unit can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the governmental unit additional time to complete its review of the records. Upon a determination by a governmental unit to comply with a request for records, the records shall be made promptly available to the person making the request.

(c) When the lawful custodian of a record determines that contents of a record exempt it under the provisions of AS 42.05.015, he shall also determine whether a deletion of the exempt parts of the record will make the record suitable for release, and, if so, the deletion shall be made and the record released, with the notation that exempt material has been removed. If the custodian determines that the record, or a portion of the record, is not open to inspection, he shall, in a certified writing, inform the person requesting the records of his determination, of the statutory basis for this decision, and that under AS 40.25.025 a suit may be brought to compel production of records that are improperly withheld.

(d) A notification of denial of a request for records under this section shall set out the names and titles or positions of each person responsible for the denial of the request.

Sec. 40.25.025. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person having custody or control of a record who obstructs or attempts to obstruct, or a person not having custody or control who aids or abets another person in obstructing or attempting to obstruct, the inspection of a record subject to inspection under AS 40.25.015 may be enjoined by the superior court from obstructing, or attempting to obstruct, the inspection of records subject to inspection under AS 40.25.015.

(b) The court may charge no filing fee, and the Department of Public Safety may charge no fee for service of process, from an applicant seeking an injunction under this section. No security may be required by the court from an applicant seeking an injunction under this section. If the applicant is granted the injunction, he shall be entitled to recover costs and reasonable attorney fees from the governmental unit.

(c) The superior court shall make available to an applicant, free

of charge, a simplified form for proceeding without counsel under this section. The form shall require only identification of the applicant and the name of the custodian alleged to be improperly withholding records, and a simple explanation of the records sought.

(d) In a suit brought under this section the court may enjoin withholding of the records and order the production to the complainant of records improperly withheld. In such a case the court shall determine the matter de novo, and may examine the contents of any records in camera to determine whether the records or any portion of them may be withheld under any of the exceptions set out in AS 40.25.015, and the burden is on the agency to sustain its action.

Sec. 40.25.035. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS. (a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

(b) A good faith reliance upon the provisions of this chapter or of applicable law governing the confidentiality of public records is a defense to a civil action brought under this section.

Sec. 40.25.040. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "attorney work product" means documents and tangible things prepared by or for a governmental unit in anticipation of or during litigation;

(2) "custodian" means the head of any governmental unit or his designee;

(3) "governmental unit" means an agency, political subdivision, legislative body, board of regents, or an administrative body, board, commission, committee, subcommittee, authority, council, agency,

or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money;

(4) "personal information" means information about an individual person, the disclosure of which would constitute an unjustifiable intrusion into a person's right of privacy;

(5) "record" means any document, paper, memoranda, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by a governmental unit as evidence of the organization, function, policies, decisions, procedures, operations or other activities of the state or political subdivision or because of the informational value in them; it also includes staff manuals and instructions to staff that directly or indirectly affect the public.

* Sec. 2. AS 44.62.310 is amended by adding a new subsection to read:

(g) Nothing in this section may be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences are subject to the same regulations for holding executive or closed sessions as are applicable to any other public body.

* Sec. 3. AS 44.62.310(c)(3) is amended to read:

(3) matters which by state statute [LAW, MUNICIPAL CHARTER,

OR ORDINANCE] are required to be confidential.

* Sec. 4. AS 11.56.820 is amended by adding a new subsection to read:

(c) It is an affirmative defense to a prosecution under this section that the defendant relied in good faith upon the provisions of AS 4 .25 or of other law governing the confidentiality of public records.

* Sec. 5. In sec. 1 of this Act, AS 40.25.025(b) has the effect of changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure relating to security deposits required in civil actions.

* Sec. 6. AS 09.25.110, 09.25.120, and 09.25.125 are repealed.

MEMORANDUM

TO: Sen. Vic Fischer, Chairman
Senate State Affairs Committee

FROM: Joe La Rocca

SUBJECT: Written Testimony on SB 99 (Relating to privacy and public information).

This is primarily to note my strong disagreement with what was the virtually unanimous opposition among my fellow journalists to Section 1, sub-section 13 (Page 4, line 11) dealing with intelligence, investigatory and original entry records. Firstly, the section is lifted almost verbatim from the federal Freedom of Information Act of 1966, as amended and has, in general, withstood the tests of time and experience in that context. Secondly, I believe that opponents of this section either have not read it in tandem with, or fail to apprehend its connection with sub-section (14) (Page 5, line 6). Thirdly, it's incomprehensible to me that anyone, even news journalists, could object to the withholding of information which, if disclosed, would (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unjustifiable intrusion into a person's right of privacy (here I prefer the federal act's language "an unwarranted invasion of the right to privacy" largely because it's a term of art for which juridical standards have already been established in case law); (4) disclose the identity of a confidential source (Mark how journalists themselves squeal when ordered to disclose the identity of a confidential source); (5) disclose investigative techniques and procedures (On-the-job training for budding investigative journalists?); endanger the life, property or physical safety of a person (Let it be the life, property or physical safety of a news journalist, and watch the opposition shrivel), or identify a victim of a criminal sexual assault. (If it were their wife, sister or mother, would they be so anxious to open it into print?; particularly when some highly sensitive withholdings are subject to prompt and costless judicial review. I hope the committee will resist pressures to remove or substantially alter sub-section 13.

Joe La Rocca

1. Closing of entry records
2. File of letters of denial of info.
3. Computer maintained records should be included.
4. 20 pgs w/in 24 hr period w/o charge.
5. Boroughs should not be opted out.
6. Language may be confusing & ambiguous. Need more Definitions of terminology.
7. Cost of Copying should be included in bill.
8. Define: "Justified intrusion"

ALASKA PUBLIC INTEREST RESEARCH GROUP
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

February 6, 1981

Sen. Vic Fischer, Chair
Senate State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Fischer:

We would like to reiterate and expand upon our comments at the teleconference hearing of February 5, 1981 on SB 90, Freedom of Information Act.

As an impressive array of witnesses have illustrated, there is a strong need for a Freedom of Information Act. SB 90, with a few relatively minor improvements, will fill that need.

Public access to information compiled by and for its government is a basic requirement of the democratic process of government. This is not special interest legislation for the press. Rather, this is legislation which ensures that the public, including the press, can hold its government accountable.

Our specific suggestions follow:

Sec. 40.25.010(d) does not contain a fee waiver for requests in the public interest by those unable to pay, such as non-profit groups or individuals. We support a change along the lines of the federal FOIA, which contains the following language: "Documents shall be furnished without charge or at reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

We support the goal of releasing non-exempt portions of records to which some exemption otherwise applies (Sec. 40.25.020(c)). The proposed standard (that the lawful custodian of the record determine whether deletion of the exempt part will make release "suitable") is vague and possibly too discretionary as a standard. We support a change along the lines of the federal FOIA's use of the standard of "reasonable segregability" to govern provision of records after an exemption has been determined to apply.

We support the existing provisions which allow requesters whose request has been denied easy and cheap access to the courts: filing and service fees are waived and the court provides a simple form which instructs complaining parties how to proceed without a lawyer. The governmental unit has the burden of proof to show the exemption applies. We suggest that any notice by the governmental unit that it is applying an exemption be required to include a packet of instructions, including the form drawn up by the superior court, on how to proceed in court without counsel to challenge the exemption. In this way we can ensure that citizens are fully aware of their rights under the law without the need to turn to legal specialists. In the interest of speedy processing of the court case, we suggest that the legislature consider requiring that the court hear the case within a specified short period (e.g. 10-30 days). Otherwise, backlogs in the court can hamper the speed with which the citizen can gain access to the information.

Another legal issue is whether someone who would be adversely affected by the disclosure of an arguably exempt record should be allowed to intervene in a case involving the application of an exemption. If this standing to intervene is not otherwise provided by the Alaska Administrative Procedures Act, it should be provided in the bill. The interests of fairness require that one who is affected by disclosure be given a voice in the process, especially since the government may not pursue the case with the same vigor as the affected party. This change should not cause delay or make access more difficult as long as the burden of proof remains solidly on those who would apply the exemption.

Sec. 40.25.115(c) should allow copies to be requested in person. When the requestor's needs are urgent enough to merit an in person request, he or she should be able to get immediate action by making the request in person.

We support several changes from previous versions of the bill:

*Exclusion of search costs in the charges to the requesting party (Sec. 40.25.015).

*Exemption for attorney work product in possession of the governmental unit only until the matter is closed (Sec. 40.25.015(e)(15)).

*Broad definition of governmental unit to which the Act applies. We urge the Committee to resist any change which would exclude local governmental units from coverage under the bill (Sec. 40.25.040 (3).

The inclusion of these changes in SB 90 strengthens the bill.

We close with the strong recommendation that the Senate pass a Freedom of Information Act substantially similar to SB 90.

Sincerely,

ALASKA PUBLIC INTEREST RESEARCH GROUP

Matthew Zencey

Matthew Zencey

Society of Professional Journalists

Farthest North Chapter
Box 74573
Fairbanks, Ak. 99707

Sigma Delta Chi

February 1, 1981

Sen. Vic Fischer
State Legislature
Pouch V
Juneau, AK 99811

Dear Sen. Fischer:

I understand that my written testimony arrived via telecopier barely legible. If I knew who to blame I would get you an apology. Lacking that, I apologize that there wasn't more time to mail it down in time for the hearing. I hope this arrives in advance of the teleconference on Thursday. If not, I plan to be present in Fairbanks for the hearing and will present this testimony orally if you have not received it and any additional comments if you have.

If there is anything I or the Task Force can do to help pass this important legislation we stand ready to help. Please don't hesitate to call on us.

Again, my apologies.

Sincerely yours,

Dean M. Gottehrer
Chairman
Alaska Freedom of Information Task Force

Society of Professional Journalists

Farthest North Chapter
Box 74573
Fairbanks, Ak. 99707

Sigma Delta Chi

January 26, 1981

Members
Senate State Affairs Committee
Alaska State Legislature
Juneau, Alaska

Dear Committee Members:

On behalf of the Alaska Freedom of Information Task Force, I thank you for the opportunity to submit written testimony on Senate Bill 90. The FOI Task Force was organized by the Farthest North Chapter of the Society of Professional Journalists and numbers nearly 40 members, among them most of the state's daily newspapers, many weekly papers, broadcast stations, magazines and other media organizations. The Task Force is dedicated to seeking the passage of a Freedom of Information bill that will bring government out of the shade where the people's business is being hidden and keep it in the sunshine where that is presently the case.

I have urged our members to judge any proposed legislation against the current law. On that standard I believe SB 90 rates high. It includes all branches of state government, covers municipal and borough governments and provides for speedy access to inspect government documents. Generally, it sides with free and open government so that the people may know what is being done in their name. For the most part the exclusions listed in the bill are rational and legitimate and balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

There are, however, some areas of the bill we would like to see changed. Presently the bill contains no definition of the right of privacy. We believe the Legislature, following the constitutional mandate should define that right. We suggest the following definition from the Restatement of Torts: Privacy is that right of an individual to be protected against publicity of a matter concerning that individual's private life when the matter publicized is of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

We believe the exclusion listed in Sec. 40.25.015 (e)(8) should be stricken from the bill. It is of such a general nature that many records the Legislature would probably want public could be withheld under that exclusion. Sec. 40.25.015 (13) concerns us for two reasons. First, it potentially excludes original entry police records--those documents completed when a suspect is taken into custody. One of the roles of the press historically has been to see that no individual is held by the police unjustly and closing original entry records makes that a much greater potential hazard. Second, (C) of (13) speaks of an unjustifiable intrusion into a person's right of privacy. If that language is to remain here and in other sections of the bill we believe a definition is needed of what is a justifiable intrusion. Since that seems almost impossible, we would prefer to see

that language removed. We don't want to see the police or other governmental unit employees left with the impression that anything unflattering is private.

In a suit for disclosure, the burden of proof should rest with the governmental unit to prove it was required not to release requested information. The courts should be instructed to presume in favor of disclosure.

Each governmental unit should be required to keep a file of letters of denial of information requests that should itself be public. This would allow easy monitoring of governmental units to determine whether they are complying with the law.

The bill does not clearly include computer maintained records as it should. The section defining records should be amended to include "information stored in a computer system." Independent contractors paid with government funds should also be included in the bill's coverage. The definition of governmental unit should include "independent contractor paid with public money in whole or in part and under the supervision of any of the above groups or units."

Whether the state should charge for document copies and how much is a question that has plagued us for some time. Some members believe the media should not be charged since they are doing the public's business when requesting documents while researching a story. Others are willing to pay. No one, however, believes a governmental unit should charge more than the actual copying cost. The method contained in the Governor's proposed regulations is a good compromise. Each requestor receives 20 pages free of charge in any 24 hour period. Above that the charge is 10 cents per page. Currently a great variety of charges exists among agencies. It would help all if the Legislature standardized these charges.

Finally, one last concern. Sec. 4 of the bill on page 10 makes a good faith reliance on AS 40.25 or other law governing confidentiality of public records a defense against the crime of tampering with public records. This defense should be clearly limited as applying only to impairing the availability of a public record and not to any of the other actions listed in AS 11.56.820.

The task you have before you is not an enviable one. You will be urged to exclude this or that branch of government, this or that agency, one or another of a multitude of types of records from coverage under the bill. As you address each of these requests, I ask that you recall that all of these governmental units exist because they are supported with public monies. The public has a right to know what is being done with these funds. Government in the sunshine is best for all people. Keeping government open primarily benefits the people--not the media. Remember that 75 percent of all requests under the federal freedom of information laws come from non-media sources and only 25 percent from the media.

Sincerely yours,

Dean Gottehrer

Dean M. Gottehrer
Chairman
Alaska Freedom of Information Task Force

February 13, 1981

To: Senate State Affairs Committee
Senator Vic Fischer, Chairman
All Members of the Committee

From: Ginny Chitwood, Executive Director
Alaska Municipal League

Re: S 90 - Privacy and Information Act

Municipalities realize the need for the public to have reasonable access to municipal records. However, the provisions in SB 90 go further than what the Alaska Municipal League considers reasonable. We can forsee many unfair burdens being placed on municipalities if this bill passes in its present form. Some are as follows:

Records produced "immediately" - This would place the request for a public document as first priority over all other conduct of the government's business. A more reasonable approach would be to allow ten days as provided by the federal government. This, at least would allow determination as to whether or not the document being requested would fall under the list of exemptions and therefore not be required to be produced or whether or not it was in the public's interest to be produced. If illegal releasing of information is done by a municipal employee, the municipality would be open to a fine which means the municipal attorney would have to review all requests.

"Direct cost" - Some documents are readily available. However, it is possible and likely that to produce other documents would involve a great deal of time; searching thru archives, records of years past in storage, etc. Most of our communities do not have sophisticated retrieval systems and the amount of time needed to locate said document could take up a good portion of the employees time. The League feels the word "direct" should be deleted from page 2, line 21, or at least defined to include labor involved by the municipal employee in the search for the document that has been requested.

Subjects for executive session - The League feels the municipality is the best judge of what should be considered confidential and objects to the deletion of the right to establish these subjects by charter or ordinance (page 9, lines 28 and 29.) Procedures for charter ratification and ordinance adoption afford adequate safeguards ensuring that local actions reflect local opinion.

Secs. 140 and 150 establish the requirements of financial disclosure. Note that financial disclosure is by "category" rather than by dollar amount. Sec. 150(a).

Sec. 160 details prohibitions on activity considered a conflict of interest. Special conflict of interest provisions for legislators appear at Sec. 170. Government contracting is regulated as Sec. 180. Conflicts of interest in employment are covered in Sec. 190. A state official or state employee other than legislator who has a personal situation that presents ethical problems is directed to a course of conduct under Sec. 210.

Sec. 220 deals with similar problems for a legislator.

Disclosure of confidential information is regulated under Sec. 240.

Sec. 250 regulates the conduct of former state officials or state employees for two years after termination of state service. Penalties are established in Sec. 260. Commission remedies for violations are established under Sec. 270, including civil penalties. Direct citizen action is authorized under Sec. 280.

The definitions section, Sec. 400 is a mix of the familiar and the new. Essentially no change was made in the list of public officials for whom financial disclosure is required. The term "candidate" is defined.

The term "gift" excludes campaign contributions reported under AS 15.13.

Secs. 3 - 19 of the bill respond to the implications of the repeal of AS 39.50 and portions of AS 15.13 and 24.45.

The Act takes effect July 1, 1981.

RAB:ljb

February 11, 1981

State Affairs Committee
Pouch V (MS 3100)
Juneau, AK 99811

The City of Kodiak would like to voice our strong objection to both the passage of SB 90 - Privacy and Public Information Act, and also to consider including municipalities under this act.

Of first concern would be the requirement to immediately produce records, specifically the personnel records. Most employees with municipal government have assigned responsibilities for eight hours, and occasionally ten or 12 hours a day. If this standard were approved there would be an immediate requirement for additional help to retrieve and produce records. Plus, the direct cost would be unrealistic due to the need for additional employees; an additional tax burden to the taxpayer.

Next would be to take away the Councils right to executive session. This would leave every municipal government wide open for a law suit, or prevent them from transacting business. Executive sessions were established for the protection of an individuals character, their tax dollars or legal matters. The general public, and most importantly the press, should be knowledgeable of why executive sessions are held. The failure to transact business because a municipality could be held liable for a "defamation of character" or "misappropriation of funds" law suit would be ever present.

Another very important item would be the disclosure of an applicants resume for municipal positions. We strive to employ the highest caliber of personnel, but just to reveal their names could prevent a well qualified individual from applying due to reprisal with a present employer. If the legislature allows this bill to become law they will deny an individual his or her right to privacy. When reviewing personnel records "that" individual should be the one to approve such action.

POST OFFICE BOX 1397. KODIAK . ALASKA 99615 PHONE (907) 486-3224

Historically the City Clerk's office has been open to the public, supplying all information with the exception of documents that would injure an individuals character, harm the municipality financially, or matters that are pending litigation. We see no valid justification for this procedure to change.

Sincerely,

CITY OF KODIAK

Kay M. Baker

Kay M. Baker
City Clerk

KMB/d

cc: Alaska Municipal League

kmxt 100.1 fm

Kodiak Public Broadcasting Corporation

P. O. Box 484, Kodiak, Alaska 99615 (907) 486-3181

Febuary 12,1981

Senate Affairs and Judiciary Committee
Pouch V (MS 3100)
Juneau, Alaska 99811

Honorable Chairperson:

I would like to submit this as written testimony in addition to the oral testimony I presented during the teleconferance on Senate Bill 90.

Overall, I am in favor of the bill. I am the News Director at KMXT radio, and former News Director at KFSK radio in Petersburg. Both KMXT and KFSK are members of the Freedom of Information Task Force.

On page four of the bill (40.25.015 (e) 13 (a,b,c)) I am concerned about who is going to determine what will "interfer with enforcement proceedings;", as well as the other conditions listed. Many of the requests for information in this area will be made to the Police Chief. If he/she is the final word on the meaning of these conditions, this could lead to abuse. A system for appeal should be given in the bill. The appeal process would probably end in the courts.

40.25.015 17 I and J, on page 6, may clear up the above concerns. Both of these sections are very good!

On pages 7 and 8 (40.25.025) the section offers a Superior Court injuction as enforcement. In Anchorage, Fairbanks, and Juneau this would work well. However, in smaller communities this is difficult. Kodiak does have a Superior Court, but the judge also covers the Dillingham area, which means he is out of town frequently. In Petersburg the Superior Court judge comes to town once a month for two days.

This section of the bill would require a Petersburg resident to travel to Juneau, or to hire an attorney. I would recommend a proceedure that would allow the Magistrates office to do the initial paperwork. The burden would then be on the court system to contact the Superior Court. This does, unfortunatly, place the extra work on an already overworked court system.

An alternative would be to make violations of the bill a misdemenor offense. A complaint court be sworn at the District Court level and the normal justice system would take over. The question of an injuction is not addressed in this plan, however.

My major concern with this section is that small town citizens have the same opportunity for enforcement as do their city counterparts.

kmxt 100.1 fm

Kodiak Public Broadcasting Corporation

P. O. Box 484, Kodiak, Alaska 99615 (907) 486-3181

On pages 9 and 10 I think section 3 44.62.310 (c) (3) is a very good change to the current statute. This would still allow executive sessions but eliminate the chance for easy abuse. This would reduce the number of unnecessary executive sessions.

Thoughout the bill I would recommend the pronouns "he","him" and "his" be changed to "he/she","him/her" and "his/hers". Often it is a City Clerk who is the custodian of records. Traditionally women are in this position.

The area of "administrative fees" needs to be adressed. A women in Kodiak recently told me she was charge a $20 "administrative fee". She explained that she copied the information she needed by hand, but was still charged. this was justified by the agency as payment for the time of the employee who watched her. This is, I hope, a violation of the spirit of this bill.

I would also like to recommend a poster be prepared that would simply outline: 1) How to request information/copies. 2) Costs per page. 3) The public's right to know. 4) And what to do for enforcement.

This poster could be up in all state offices that have records, City and Borough Clerks offices, and courts. This would be an easy way to inform the public of its rights.

In conclusion I will quote from the bill and AS 44.62.312 (5) "THE PEOPLES RIGHT TO REMAIN INFORMED SHALL BE PROTECTED SO THAT THEY MAY RETAIN CONTROL OVER THE INSTRUMENTS THEY HAVE CREATED."

Thank You.

Sincerly,

Jon Newstrom
News Director

cc: Freedom of Information Task Forse
Kodiak Daily Mirror
KFSK Radio, Petersburg

CENTRAL ALASKA
BROADCASTING, INC.

Duane L. Triplett
President and
General Manager

February 9, 1981

Senator Vic Fischer
Senate State Affairs Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator Fischer,

Let me take a few moments of your time to comment on Senate Bill 90 as it was introduced on January 15, 1981.

On behalf of KIMO-TV and its President, Duane L. Triplett and its News Director, John Vallentine, I would like to express our support for SB-90 with the following exceptions:

1) Most "exceptions" to the act are based on the right of privacy and guarantees no unjustifiable intrustians. A clear definition of this right should be included and used as the basis for the legislated exceptions.

2) On page 3 at line 22, Sec. 40.25, 015(e)(8) is much to broad and should be stricken.

3) On page 4 at line 11, Sec. 40.25, 015(13) appears to exclude those records prepared by a police officer at the time the action is taken. This implies that only "filtered" versions, if any would be available. Our free society depends on free press having the information on the activities of our government especially our law enforcement agencies.

The Society of Professional Journalists, Sigma Delta Chi, Fairbanks Chapter, has recommended to you that independent contractors paid with government funds should be included in the definition of governmental unit. I could support that position only to the extent that those records pertinent to a government contract might need to be available but certainly those nongovernment contract related activities of independent contractors should not be included.

... continued

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In conclusion, please consider that the "business of the people" (our government) is the peoples business. We, they, have a right to know. Do not confuse this issue as one only for the rights of reporters. The mass media happens only to be the most visible of petitioners.

Thank you for this opportunity for input.

Sincerely yours,

CENTRAL ALASKA BROADCASTING, INC.

David L. Geesin,
Director of Community Affairs

DLG:bke

D R A F T

COMMENTARY TO PROPOSED COMMITTEE SUBSTITUTE FOR SB 90

February 6, 1981

D R A F T

COMMENTARY TO PROPOSED
COMMITTEE SUBSTITUTE FOR
SB 90

Sec. 40.25.010. State Policy.

No change from SB 90.

Sec. 40.25.015. Records To Be Open To Inspection.

The reference to "exceptions" in the title has been eliminated since a separate exemption section now appears in sec. 40.25.030. The reference to inspections that infringe on a person's right to privacy has been deleted from subsection (a) since a separate exemption on this subject appears in sec. 40.25.030. Subsection (d) has been amended to allow a person to receive 20 pages of a record copied without charge during any 24-hour period and to permit the waiver of fees in the public interest.

Sec. 40.25.020. Duties Of Governmental Unit.

This new section takes the place of Sec. 40.25.020, Requests For Records, in SB 90. It provides a reasonable time frame for an agency to search for, locate and determine whether a record is subject to disclosure. It also allows sufficient time for the agency to determine whether a specific exemption to disclosure applies and, in particular, whether disclosure would constitute an unwarranted invasion of personal privacy. The time frame specified is consistent with the administration's recently proposed procedural regulations on public information as well as CSHB 131

(Judiciary, 1977) and SCS CSHB 75 (1980). It does, however, add a fourth circumstance justifying extension of the ordinary 10-day period in which to respond to a public request: the need to notify a person and provide him with an opportunity to be heard when his privacy interests may be invaded through disclosure of the record. See sec. 40.25.030(c).

Sec. 40.25.030. Exemptions.

This section lists 12 exemptions from the duty to make records public.

Exemption (1) now includes records exempt from disclosure by federal law and regulation (which are currently exempt from disclosure under existing law) as well as records exempt from disclosure by court rule.

Exemption (2)(tax returns) remains identical to former exemption (2), but the clause pertaining to subject access has been deleted as the issue of subject access is covered generally under sec. 41.25.040.

Former exemptions (3)-(8) are now covered under the general privacy exemption in exemption (12) and are discussed under the commentary pertaining to that exemption.

Former exemption (9)(archival records) now appears without change as exemption (3).

Former exemption (10) (library records) now appears without change as exemption (4).

Former exemption (11)(trade secrets) now appears as exemption (5). The exemption has been redrafted to conform more closely with the companion federal provision

and to protect trade secrets and other confidential business information developed by government. The term "trade secrets" is intended to include any formula, pattern, device or compilation of information which is used in a commercial setting which gives the owner an opportunity to obtain an advantage over competitors who do not know or use it.

The definition of the term confidential has been clarified by several major cases arising under the federal exemption, and those cases should serve as persuasive authority in interpreting the Alaska provision. Material has been held to be confidential if: (1) it would not customarily be released to the public by the person from whom it was obtained, Sterling Drug, Inc. v. FTC, 450 F.2d 698, 709 (D.C. Cir. 1971); (2) disclosure would impair an agency's ability to obtain similar information in the future, National Parks & Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974); or (3) disclosure would cause substantial harm to the competitive position of the person from whom the information was obtained, National Parks & Conservation Association v. Kleppe, 547 F.2d 673, 679 (D.C. Cir. 1976).

Former exemption (12)(test questions) now appears as exemption (6) and has been narrowed to provide that the exemption only applies if disclosure would compromise the objectivity of the examination process.

Former exemption (13)(law enforcement files) now appears as exemption (7) The introductory section has been modified slightly to more closely parallel the corresponding

section in the federal act with the general reference to "other governmental unit" eliminated. Former subsection (H) has been deleted as unnecessary as the exemption is already covered by exemption (1).

Paragraph (G) of former exemption (13)(crime victims) has been deleted as it implies that the names of victims of crimes other than sexual assault are subject to public disclosure. In the proposed committee substitute the names of all crime victims would be protected from disclosure under both exemption (12) and subsection (h) of this section, until open court proceedings were initiated where the victim was identified. The right of the public to know other basic information about a crime (original entry records) is emphasized in subsection (h) of this section, and reference is made to the commentary accompanying that subsection.

The attorney work product exemption (former exemption (15)) now appears as exemption (9). The limitation in SB 90 requiring disclosure of attorney work product after the litigation has ended has been eliminated. Materials prepared by an attorney in preparation of possible litigation have been exempt from discovery since the landmark decision in Hickman v. Taylor, 329 U.S. 495 (1947). In that opinion the court noted the general policy against invading the privacy of an attorney's preparation of a case is essential to the orderly working of our legal system. Additionally, the attorney work product exemption has been held to apply to discovery of attorney work product in cases that have already been terminated, In Re Murphy, 560 F.2d 326 (8th Cir. 1977).

Consequently, in permitting discovery of attorney work product once the litigation has ended, SB 90 may be in contradiction to the Alaska Court Rules of Civil Procedure.

Former exemption (16)(judge's opinions) now appears as exemption (10), but the prior limitation in the exemption (once the case has been decided, prior draft opinions become public) has been eliminated for the same reasons as discussed under the attorney work product exemption above.

Former exemption (17) (internal security procedures) appears without change as exemption (11).

Exemption (12) exempts from disclosure records that would constitute an unwarranted invasion of personal privacy. This exemption is broad enough to take the place of the general "infringes on a person's right to privacy" exemption specified in sec. 40.25.015(a) of SB 90, and the specific exemptions in former subsections (a)(3)-(8). In using the term "unwarranted invasion of privacy" the proposed committee substitute emphasizes that even in instances where disclosure would constitute an invasion of privacy, disclosure is required if the public interest in disclosure outweighs the privacy interest.

The deletion of the specific exemptions previously found sec. 40.25.015(a)(3)-(8) of SB 90 does not make any substantive change in the bill. While SB 90 appears to provide that all information referred to in exemptions (3)-(8) are exempt from disclosure, each exemption requires that the information constitute "personal information" for it to be exempt from disclosure. That term was defined in former

sec. 40.25.040(4) as "information about an individual person, the disclosure of which would constitute an unjustifiable invasion into a person's right to privacy". Consequently, rather than blanketly exempt from disclosure the categories of records listed in exemptions (3)-(8), SB 90 requires the agency to first balance the two competing interests involved (the public's right to access to information concerning the conduct of governmental affairs and a person's privacy interests) in making a determination whether to disclose a particular record. The specific exemptions in (3)-(8) are therefore unnecessary under both SB 90, which exempts from disclosure in sec. 40.25.015(a) records that would infringe on a person's right to privacy and, under exemption (12) of the proposed committee substitute, which exempts from disclosure records that would constitute an unwarranted invasion of privacy.

Subsection (b) is new to SB 90. It is intended to: (1) state the general test to be used by a governmental unit in determining whether disclosure would constitute an unwarranted invasion of privacy; and (2) provide guidelines to be used in applying that test. Subsection (b) does not, however, define the right to privacy. Because of the wide ranging circumstances where the right to privacy can be asserted, and the competing public interests involved, the term is not susceptible to a single and uniform definition. However, in the context of disclosure of public records, specified guidelines can be provided to governmental units, and ultimately the courts, as an aid in determining whether

disclosure of a particular record would constitute an unwarranted invasion of personal privacy. The proposed committee substitute adopts this approach.

The guidelines listed in paragraphs (1)-(9) are not necessarily listed in order of importance nor are they to be viewed as having equal weight in arriving at a decision regarding disclosure. For example, if the information was of a personal nature under paragraph (1), but the individual was notified, or reasonably could have concluded, that the information would be subject to public review at the time he provided the information, the guideline in paragraph (7) would clearly take precedence and require disclosure.

The factors listed in guideline (1) are taken from AS 39.26.010, which prohibits the government from inquiring into certain personal matters concerning state employees except as directly related to the performance of their official duties. Subparagraph (E) is based on former sec. 40.25.015(e)(6).

The most important consideration in guideline (2) is whether the person could reasonably assert an option to withold embarrassing information from the public. A critical factor in arriving at the determination would be the relationship between the information and the person's ability to perform in the governmental capacity he may hold. In such a case, the information, though embarrassing, could not be witheld. Again, as with the other guidelines, each must be considered in relationship to other considerations. For example, embarrassing information about an individual that was merely rumor or conjecture would result in a much more substantial

privacy claim pursuant to guideline (8).

As is apparent from guideline (3), in many instances it is relevant to consider the standing of the person who has requested the information. It will sometimes be impossible to determine if a given disclosure will produce an unwarranted invasion of privacy without considering what the requesting party intends to do with the information. For example, a compilation of the home addresses of all state employees listing their salaries would not be exempt from a newspaper reporter doing a story on the "average" state employee, while the compilation should be exempt from release to an advertising agency intending to use the list for purposes of commercial solicitation.

Guideline (4) is largely self-explanatory. The fact that the information was voluntarily furnished by an individual reduces his privacy claim while the fact that he may have been compelled to furnish the information increases his privacy claim.

The guideline in paragraph (5) is intended to emphasize that personal information supplied by applicants or recipients of basic social service programs, such as public assistance, are entitled to substantial privacy protection as the information was submitted in order t obtain minimum social benefits, and the individual had little choice but to submit the required information. This compares, however, with the privacy claim of individuals who supply information to government in an effort to obtain substantial government benefits or subsidies. Their privacy

claim is significantly reduced since the decision to apply and supply the information was a voluntary one on the part of the individual. Additionally, there is a significant public interest in monitoring governmental programs that distribute substantial amounts of state wealth to relatively few individuals.

The fact that the information requested was readily available from non-governmental sources reduces an individual's privacy claim pursuant to guideline (6), as does notification to the person at the time he supplies the information that the record will be subject to public disclosure pursuant to guideline (7).

An individual's privacy claim will be substantially greater under guideline (8) when the requested personal information consists of unverified information or rumor. The substantial damage that uncorroborated information about an individual can do to personal reputation weighs heavily against disclosure.

Guideline (9) is self-explanatory.

Subsection (c) is also new to SB 90. It establishes notice procedures to protect individual privacy interests. The duty under subsection (c) arises whenever the governmental unit has decided to disclose material that may come within exemption (a)(7)(C) or (a)(12) and there is a <u>substantial probability</u> that the person identified in the record will object to disclosure. The "substantial probability" language emphasizes that the notice requirement does not apply every time there is a possibility that a privacy exemption may be

applicable. If the governmental unit applies the guidelines specified in subsection (b), notification should only be required in a small minority of cases. However, in cases, for example, where there is significant disagreement in the governmental unit itself as to whether the public interests in disclosure outweigh any applicable privacy interests, the agency should be fully apprised of all considerations favoring non-disclosure before declining to assert an applicable exemption.

Subsection (d)(all records became public after 20 years) is identical to Sec. 40.25.015(f) in SB 90.

Subsection (e)(research)is identical to Sec. 40.25.015(g) in SB 90 but in paragraph (2), reference has been made to federal law or regulation and court rule, consistent with exemption (1).

Subsection (f)(subpoenaed records) is similar to sec. 40.25.015(b) in SB 90 but emphasizes that other state laws pertaining to the confidentiality of public records cannot be raised to prevent disclosure once a subpoena has been issued.

Subsection (j), pertaining to employee personnel records, is based on sec. 40.25.015(i) but more clearly defines the types of employment personnel records subject to disclosure and exempts from disclosure personnel performance evaluations. While there is substantial disagreement on this issue, the proposed committee substitute reflects the view that the disclosure of such information constitutes an unwarranted invasion of the employee's right to privacy and

unnecessarily hampers the ability of government to use the performance evaluation as an effective supervisory tool to insure adequate job performance.

Subsection (h), pertaining to crime information, is identical to sec. 40.25.015(j), but does not provide that the name of the victim of a crime is a matter of public information. The proposed committee substitute adopts the approach that until open court proceedings commence where the victim is identified, the release of the victim's name would constitute an unwarranted invasion of privacy.

Sec. 40.25.040. Access To Records By Record Subject.

This section, which is new to SB 90, gives the individual or his duly authorized representative the right of access to any accessible record pertaining to him. "Accessible record" is defined in sec. 40.25.090(1) as a record that refers to a particular individual that can be retrieved as a result: (1) of the governmental unit's use of a retrieval scheme or index based on the identity of the individual; or (2) of the requester providing sufficiently detailed information to enable the governmental unit to locate the record without an unreasonable expenditure of time, effort, money or other resources. The compliance timetable and procedures of secs. 40.25.015--40.25.020 are incorporated by reference. Consequently, the same procedures apply if the individual is requesting access to any record whether or not his own.

Subsection (b) imposes limits on the individual's right of access to his personal records. Paragraph (1)

incorporates the relevant freedom of information exemptions of secs. 40.25.030(a)(1)--40.25.030(a)(11). Additionally, paragraph (1) allows disclosure of information that would otherwise be exempt under AS 40.25.030(a)(1)--40.25.030(a)(11) if the information was originally submitted to the governmental unit by the requester.

Paragraph (2) limits an individual's access to his personal records to the extent necessary to prevent an unwarranted invasion of another individual's personal privacy. The agency should, of course, balance the public interest in disclosure against the privacy interest of the individual to whom the records pertains. See sec. 40.25.030(b).

Paragraph (3) protects the anonymity of individuals who write letters of recommendation or provide character and fitness evaluations. A record requester is entitled to access, however, provided that the identity of the source of the evaluation is not revealed. This section also confirms that an individual shall have access to his own test questions and answers in any examination used for licensing or public employment. This applies to examinations that the individual must take and pass in order to practice a trade or profession such as bar and real estate examinations. This right is limited to access and does not include copying. This limitation enables government agencies to protect the integrity of test questions that may be used for future examinations.

Subsection (c) is intended to be consistent with protections existing for the confidentiality of records of minors who may seek counselling for or treatment of conditions

such as venereal disease, pregnancy, or alcohol or other drug abuse. The purpose of these provisions is to remove the fear of parental discovery and thus encourage minors to seek appropriate aid. This provision prevents parents and guardians from circumventing these statutes by asserting, in a representative legal capacity, the access rights of their children.

Subsection (d) is similar in intent to sec. 40.25.020(c).

Sec. 40.25.060. Correction and Amendment of Records.

This section, which is new to SB 90, provides an individual with the right to correct or amend any incomplete or inaccurate information contained in a record accessible to him under sec. 40.25.040.

Subsection (b) specifies that a request to correct or amend must be in writing and requires a governmental unit to respond within twenty days after receipt of the request. If the governmental unit makes the correction or amendment or does not maintain the record, the matter comes to an end. If the agency refuses to correct or amend as requested, it must inform the individual in writing of its decision and state the reasons.

If the governmental unit refuses to order the correction or amendment, subparagraphs (b)(3)(A)-(B) permit the individual to file a statement of disagreement with his record and requires the governmental unit to notify the individual of his right to bring a judicial action pursuant to sec. 40.25.070. Whenever a governmental unit discloses

disputed information to a third party, subsection (c) compels it to: (1) identify the disputed information; (2) provide a copy of the individual's statement of disagreement or pending request for amendment or correction; and (3) provide a statement of the agency's current position concerning the requested amendment or correction, including final action if any has been taken. The agency must also transmit a copy of the statement of its current position to the last known address of the individual whose record is released.

Sec. 40.25.070. Enforcement: Injunctive Relief.

This section remains largely unchanged from sec. 40.25.025 in SB 90, but reflects the ability of an individual to require a governmental unit to correct or amend incomplete or inaccurate information pertaining to him.

Sec. 40.25.080. Civil Action For Obstruction Of Access To Records.

No change from SB 90.

Sec. 40.25.090. Definitions.

A definition of "accessible records" appears in paragraph (1). That term is used in sec. 40.25.040 and is discussed in the commentary under that section.

The definition of "governmental unit" remains identical to the definition in SB 90 and specifically includes municipalities.

The definition of "personal information" has been eliminated as that term is not used in the proposed committee substitute.

A new definition of "individual" is provided. That term is used in the section on individual access to records concerning themselves, and is intended to exclude organizations, such as corporations and partnerships.

Sections 2 - 5.

The amendments in sections 2-5 of SB 90 appear without modification in the committee substitute with the exception of former section 4, providing an affirmative defense to the crime of Tampering With Public Records. In view of the requirement in the definition in the crime that the public servant "know" that conduct is improper, the affirmative defense has been eliminated.

Section 6. Effective Date.

A delayed effective date is provided to allow sufficient time to identify and propose amendments to the Act as a result of oversights in coverage.